रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

# भारत का राजपत्र
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सं. 22] नई दिल्ली, जून 3—जून 9, 2018, शनिवार/ज्येष्ठ 13—ज्येष्ठ 19, 1940
No. 22] NEW DELHI, JUNE 3—JUNE 9, 2018, SATURDAY/JYAISTHA 13—JYAISTHA 19, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड ( ii )
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों ( रक्षा मंत्रालय को छोड़कर ) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

## वित्त मंत्रालय

## (वित्तीय सेवाएं विभाग)

नई दिल्ली, 14 मई, 2018

**का.आ. 885.**—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, डॉ. भूषण कुमार सिन्हा, आर्थिक सलाहकार, भारत सरकार, वित्त मंत्रालय, वित्तीय सेवाएं विभाग को तत्काल प्रभाव से और अगले आदेशों तक, श्री गोविंद मोहन के स्थान पर सेन्ट्रल बैंक आफ इंडिया के निदेशक मण्डल में सरकारी नामिती निदेशक के रूप में नामित करती है।

[फा.सं. 6/3/2012-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

## MINISTRY OF FINANCE

## (Department of Financial Services)

New Delhi, the 14th May, 2018

**S.O. 885.—**In exercise of the powers conferred by clause (b) of sub-section (3) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with sub-clause (1) of clause 3 of The

Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby nominates Dr Bhushan Kumar Sinha, Economic Adviser, Government of India, Ministry of Finance, Department of Financial Services, as Government Nominee Director on the Board of Directors of Central Bank of India, with immediate effect and until further orders, *vice* Shri Govind Mohan.

[F. No. 6/3/2012-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 23 मई, 2018

**का.आ. 886**. —बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ज) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री तपन रे (जन्म तिथिः 9.9.1957) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, सेन्ट्रल बैंक आफ इंडिया में अंशकालिक गैर-सरकारी निदेशक के साथ-साथ गैर-कार्यकारी अध्यक्ष के पद पर नियुक्त करती है।

[फा.सं. 6/3/2017-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 23rd May, 2018

**S.O. 886.—**In exercise of the powers conferred by clause (h) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby appoints Shri Tapan Ray (date of birth: 9.9.1957) as Part-time Non-official Director as well as Non-Executive Chairman in Central Bank of India for a period of three years from the date of notification of his appointment, or until further orders, whichever is earlier.

[F. No. 6/3/2017-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 23 मई, 2018

**का.आ. 887.—**बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1980 की धारा 9 की उप-धारा (3) के खंड (ज) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री चरण सिंह (जन्म तिथिः 30.9.1960) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब एंड सिंध बैंक में अंशकालिक गैर-सरकारी निदेशक के साथ-साथ गैर-कार्यकारी अध्यक्ष के पद पर नियुक्त करती है।

[फा.सं. 6/3/2017-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 23rd May, 2018

**S.O. 887.—**In exercise of the powers conferred by clause (h) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the Central Government hereby appoints Shri Charan Singh (date of birth: 30.9.1960) as Part-time Non-official Director as well as Non-Executive Chairman in Punjab and Sind Bank for a period of three years from the date of notification of his appointment, or until further orders, whichever is earlier.

[F. No. 6/3/2017-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 23 मई, 2018

**का.आ. 888.**—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ज) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, सुश्री अंजलि बंसल (जन्म तिथि: 25.2.1971) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, देना बैंक में अंशकालिक गैर-सरकारी निदेशक के साथ-साथ गैर-कार्यकारी अध्यक्ष के पद पर नियुक्त करती है।

[फा.सं. 6/3/2017-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 23rd May, 2018

**S.O. 888.**—In exercise of the powers conferred by clause (h) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby appoints Ms. Anjali Bansal (date of birth: 25.2.1971) as Part-time Non-official Director as well as Non-Executive Chairman in Dena Bank for a period of three years from the date of notification of her appointment or until further orders, whichever is earlier.

[F. No. 6/3/2017-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 23 मई, 2018

**का.आ. 889.**—दिनांक 8.7.2013 की अधिसूचना संख्या फा. सं. 4/4/2012-बीओ-I में आंशिक संशोधन करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री राजीव ऋषि को उनके पदनाम को निम्नानुसार संशोधित करते हुए अधिसूचना की तारीख से उनके बचे हुए कार्यकाल की अवधि (अर्थात् 31.7.2018 तक) के लिए अथवा अगले आदेशों तक, जो भी पहले हो, सेन्ट्रल बैंक आफ इंडिया के प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी के पद पर नियुक्त करती है:

| वर्तमान पदनाम | नया पदनाम |
|---|---|
| अध्यक्ष एवं प्रबंध निदेशक | प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी |

[फा.सं. 6/3/2017-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 23rd May, 2018

**S.O. 889.**—In a partial modification to the notification F. No. 4/4/2012-BO-I, dated 8.7.2013, Central Government, hereby appoints Shri Rajeev Rishi as Managing Director and Chief Executive Officer, Central Bank of India, with effect from the date of notification, for the residual period of his tenure (*i.e.* till 31.7.2018), or until further orders, whichever is earlier, by modifying his designation as under:

| Existing designation | New Designation |
|---|---|
| Chairman and Managing Director | Managing Director and Chief Executive Officer |

[F. No. 6/3/2017-BO-I]

JNANATOSH ROY, Under Secy.

## कृषि एवं किसान कल्याण मंत्रालय

**(कृषि अनुसंधान एवं शिक्षा विभाग)**

नई दिल्ली, 31 मई, 2018

**का.आ. 890.**—केन्द्रीय सरकार, कृषि एवं किसान कल्याण मंत्रालय कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली 1976 के नियम 10 के उपनियम (4) के अनुसरण में भा.कृ.अ.प.-केन्द्रीय आलू अनुसंधान केन्द्र, जालन्धर को जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतदद्वारा अधिसूचित करती है।

[फा.सं. 13-10/2009-हिंदी/94-140]

राजेश कुमार, अवर सचिव

## MINISTRY OF AGRICULTURE AND FARMER WELFARE

**(Department of Agricultural Research and Education)**

New Delhi, the 31st May, 2018

**S.O. 890.—**In pursuance of sub-Rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules 1976, the Central Government, Ministry of Agriculture and Farmer Welfare, Department of Agricultural Research & Education hereby notifies the ICAR-Central Potato Research Station, Jalandhar. The CPRS, Jalandhar where more than 80% to staff have acquired the working knowledge of Hindi.

[F. No. 13-10/2009-Hindi/94-140]

RAJESH KUMAR, Under Secy.

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## पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 28 मई, 2018

**का.आ. 891.**—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में, पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रमों के निम्नलिखित कार्यालयों को, जिसके 80 या अधिक प्रतिशत कर्मचारी वृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :-

1. भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड
   राज्य प्रमुख कार्यालय (रिटेल), भुवनेश्वर
   आलोक भारती कॉम्प्लेक्स (द्वितीय तल)
   शहीद नगर, भुवनेश्वर-751007
   ओडिशा

[सं. 11011/1/2017 (हिंदी)]

ऊषा बिन्जोला, संयुक्त निदेशक (राजभाषा)

## MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 28th May, 2018

**S.O. 891.—**In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Public Sector Undertakings under the administrative control of the Ministry of Petroleum and Natural Gas, in which 80 or more percent of the staff have acquired the working knowledge of Hindi :

1. Bharat Petorleum Corporation Ltd.
   State Head (Retail), Bhubaneswar,
   Alok Bharati Complex (2nd Floor)
   Shahid Nagar, Bhubaneswar-751007
   Odisha

[No. 11011/1/2017 (Hindi)]

USHA BINJOLA, Jt. Director (OL)

## श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 25 मई, 2018

**का.आ. 892.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एन. के. मित्रा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 15/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.05.2018 को प्राप्त हुआ था।

[सं. एल-29011/56/2013-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

## MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 25th May, 2018

**S.O. 892.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. N.K. Mitra and their workman, which was received by the Central Government on 24.05.2018.

[No. L-29011/56/2013-IR (M)]

D. K. HIMANSHU, Under Secy.

### ANNEXURE

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

### INDUSTRIAL DISPUTE CASE NO. 15/2014

**Date of Passing Award – 1st May, 2018**

**Between:**

Shri N.K. Mitra, Raising Contractor,
C/o. M/s. Essel Mining & Industries Limited,
At. Jhilling Longolata Iron & Manganese Mines,
PO. Jajang, Via. Joda, Dist. Keonjhar (Odisha) …1st Party-Management

**(And)**

The General Secretary,
Shramik Surakhsa Sangha,
At./Po. Sarai, Via. Champua,
Dist. Keonjhar (Odisha), Keonjhar …2nd Party-Union

**Appearances :**

None … For the 1st Party-Management

Shri K.N. Nanda, General Secretary … For the 2nd Party-Union

### AWARD

The Government of India in the Ministry of Labour in exercising its authority conferred by clause (d) of sub-section (1) of sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short "The Act") have referred a dispute between the Management of M/s. Essel Mining & Industries Ltd., and allegedly its workmen vide letter No. L-29011/56/2013 – IR(M), dated 04.04.2014 for its adjudication and the schedule of the reference is as follows:-

> "Whether the action of the management of M/s. N.K. Mitra, a contractor of M/s. Essel Mining and Industries Ltd., in terminating the services of Sh. Sribastab Soren with effect from 30.10.2012 is legal and justified? What relief the workman is entitled to"?

2. Briefly stated, the case of the disputant workman as emerges from his statement of claim is that being appointed as P.R.W. (Mazdoor) he was working in the Iron Ore Mines of M/s. Essel Mining at Jhilling Langalota through the contractor M/s. N.K. Mitra from the year 1984. But, the Management refused him employment after 30.10.2012 on a plea of he being superannuated. It is his claim that he was never informed that he was going to attain the age of superannuation i.e. 58 years on 30.12.2012. According to him he did not attain the age of 58 years on 30.12.2012 and he was not paid any retrenchment compensation or service benefits of superannuation, when he was refused employment. Hence, he raised a dispute before the labour machinery resulting in the reference as mentioned earlier. The 2nd party-workman has made a prayer for his reinstatement with back wages and other service benefits, taking a plea that he was not in any gainful employment after his illegal retrenchment.

3. As both the contractor and the Principal Employer failed to appear and contest the claim in inspite of sufficiency of notice on them, they have been set exparte.

4. The disputant workman has examined himself as W.W.-1 and filed copy of the letter of the E.P.F.O. dated 7.12.2012, copy of the wage slip issued to the workman, copy of the letter of the General Secretary to the R.L.C.(C), Rourkela dated 5.11.2012 which are marked as Ext.- 1 to Ext.-3 in support of his claim.

5. The oral testimony of the disputant workman filed in form of sworn affidavit is identical to the pleadings advanced in his claim statement. There is nothing substantial in his unchallenged and uncontroverted statement to disbelieve his version. Rather, it is found from the information furnished by the E.P.F. Organization (Ext.-1) that the disputant workman was aged 25 years on October, 1984. The unchallenged copy of the wage slip (Ext.-2) reveals that he was engaged by the contractor M/s. N.K. Mitra and both the principal employer M/s. Essel Mining and the contractor M/s. N.K. Mitra were informed about illegal refusal of employment to the workman after 30.10.2012. Be that as it may, the disputant workman was supposed to continue his employment till October, 2017 when he attained the age of superannuation i.e. 58 years. Hence, refusal of employment to him after 30.12.2012 till he attained the age of 58 years i.e. 30.12.2017 is totally illegal as he is alleged to have not been paid any retrenchment compensation or notice pay prior to sudden refusal of employment to him and the such refusal of employment amounted to retrenchment in violation of the provisions of Section 25-F of the Act. As he is already attained the age of the superannuation with effect from the month of November 2017, no direction of reinstatement can be given. However, the workman is entitled to receive his wages for the period from 01.11.2012 to 30.12.2017 and other service benefits being deemed to be in service.

6. Hence, the Managements are directed to pay the wages to the workman Shri Sribastab Soreng to which he is entitled to receive from 01.11.2012 to 30.12.2017 and other service benefits to which he would have received being deemed in service within two months of the publication of the award failing which the workman is entitled to receive the above amount with 8% from the date of publication of the award.

7. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 25 मई, 2018

**का.आ. 893.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मिस्त्रीलाल माइन्स प्रा. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 36/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.05.2018 को प्राप्त हुआ था।

[सं. एल-27024/1/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2018

**S.O. 893.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2015) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Misrilal Mines Pvt. Ltd. and their workman, which was received by the Central Government on 21.05.2018.

[No. L-27024/1/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 36/2015**

**Date of Passing Award – 17th April, 2018**

**Between:**

M/s. Misrilall Mines Pvt. Ltd.,
27-A, Camac Street, Kolkata – 700 016 …1st Party-Management

**(And)**

The General Secretary,
Sukinda Uptyaka Mines Workers Union (SUMWU),
Saruabil, Po. Kanasa, Via. Sukinda,
Dist. Jajpur, Odisha …2nd Party-Union

**Appearances:**

M/s. P.P. Mohanty, Advocate … For the 1st Party-Management

M/s. G. Pujari, Advocate … For the 2nd Party-Union

**AWARD**

This award is directed against a reference made by the Government of India in the Ministry of Labour vide its letter No. L-27024/1/2015-IR(M), dated 13.10.2015 in exercising its authority conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 read with sub-section 7 of Section 25-N of the Industrial Disputes Act, 1947 (in short "The Act") whereby this Tribunal is required to review the permission accorded to the 1st Party-Management M/s. Misrilal Mines vide order dated 02.03.2015 of the Government of India, Ministry of Labour & Employment to retrench its 166 workers under certain terms and conditions.

2. The undisputed facts giving rise to the reference are as under:-

The 1st Party-Management is an "Industry" engaged in raising minerals and more than 100 workmen were under his employment for raising such minerals from the mines given to him on lease. As such, It is required to abide by provisions under Chapter V-B of the Act. It was a lessee of the Government of Odisha in respect of Saruabil Chromite Mines situated in Mouza Saruabil, Kamarda and Talangi under Sukinda Tahasil of Jajpur District. As the period of lease of it's mine was going to expire on 14.5.2014, an application for the renewal of the lease was moved and when such application for renewal was pending for consideration before the Govt. of Odisha it applied to the appropriate Government i.e. the Central Government seeking permission to lay off workers as required under section 25-M of the Act. He was refused permission for such laying off workers. On the self and same ground it preferred another application invoking the provisions of Section 25-N of the Act for a permission to retrench 166 number of workers. The appropriate Government vide its order dated 02.03.2015 granted permission to retrench the workmen. Being aggrieved by such order the 2nd party-Union preferred a writ vide W.P.(C) No. 5055/2015 in the Hon'ble High Court of Orissa challenging the order granting permission to retrench the workmen. The said writ was dismissed on a finding that alternative remedy is available to the workmen. The said order of the Hon'ble Court was also challenged before a Division Bench vide Writ Appeal No. 203/2015 and the Writ Appeal was dismissed with observation that alternative remedy is available to the workmen. Hence, the 2nd Party-Union filed an application for review of the permission order dated 02.03.2015 invoking the provisions of sub-Section 6 of Section 25-N of the Act. After issuing notice to the 1st Party-Management and hearing the parties the authorized officer admitted the application of the 2nd party-Union and referred the matter to this Tribunal for its judicial examination in accordance with the provisions of sub-section 6 of Section 25-N of the Act instead of reviewing the order itself. It is also pertinent to mention here that there is no serious dispute to the fact that in view of renewal of lease in favour of the Management 146 retrenched workmen have been reinstated in the meanwhile.

The review has been sought on the grounds that requirements of Section 25-N of the Act and corresponding rules were not followed by the Management before seeking permission to retrench 166 workmen. All the concerned workmen

were not served notice in respect to the application for such permission and the proof thereof was not annexed with the application presented before the appropriate government. There was no justifiable ground to retrench the workmen and the order passed by the authorized officer was not a speaking order as required under the law. It has been further pleaded that no proper enquiry was made and the concerned workmen were not given opportunity to be heard while the impugned order under review was passed.

Per contra, the Management has taken a stand that the impugned order does not suffer from any illegality and there is absolutely no cause of action for the Union to bring a review petition which is barred by the principle of estopple and acquiescence. The review has been challenged on a plea that maintainability of the permission and non-compliance of provisions before seeking such permission was never raised in the writ appeal as well as before the appropriate government at the first instance. As such the 2nd party is estopped to raise such issue in the present review. The 2nd party-Union being representative of all concerned workmen was duly served notice and application for permission and the impugned permission was given after hearing the 2nd party-Union. It is the contention of the 1st Party-Management that the order being a reasoned one needs no interference. That apart, pleading has been advanced that all concerned workmen were paid three months wages and retrenchment compensation in shape of Bank Draft pursuant to the direction given in the impugned order. All workmen except four refused to accept the Bank drafts and returned the same. In the meanwhile most of them numbering 146 are reinstated in the event of granting of license to raise minerals.

On the aforesaid pleadings of the parties the points for examination, therefore, is whether the impugned order dated 02.03.2015 granting permission to retrench 166 workmen of the 1st Party-Management was passed with conformity to the requirements under section 25-N of the Act and whether the same was legal and justified and sustainable in the eye of law.

The 1st Party-Management has adduced oral as well as documentary evidence to establish that the permission granted earlier vide order dated 02.03.2015 was in accordance to law whereas the 2nd party-Union has relied upon certain official communications which are marked as Ext.-1 to Ext.- 5 and elicitations from cross examination of the Management Witness to justify its action to file the review petition and for setting aside the impugned permission accorded to the Management to retrench its worker.

It is the contention of the learned counsel for the 2nd party-Union that the impugned order is not sustainable in the eye of law as requirements of Section 25-N was not complied with when an application was presented before the appropriate authority seeking permission to retrench the workmen and in view of contention raised by the Union in this regard the Tribunal has to examine while giving node to the impugned order (i) whether the Management had displayed seniority list of the workmen in the notice board (ii) whether the Management had applied for permission in the proper form as prescribed under the law/rule (iii) whether the application form was enclosed with all documents as required under law (iv) whether such application for permission and along with required documents were served to all concerned workmen and (v) whether there was sufficient reason to accord permission to retrench the workmen. According to him the evidence advanced by the Management does not reveal that requirements of the Section 25-N was duly complied with when application for permission was presented before the appropriate Government. The Management having failed to serve copy of such application to each individual workmen and having failed to file balance sheets showing the loss and profit of the company for the last three years is not entitled to any permission for such retrenchment and therefore, the impugned order is to be set aside and the workmen are entitled to their wages and other service benefits being deemed to be in service.

On the other hand the learned counsel for the Management has vehemently contended that the impugned order is not suffering from any illegality and unjustifiability and the Management having failed to raise the issues which is raised in the present reference, in the writs as well as at the time of hearing on the first occasion, he is estopped to raise such issues at this stage. As the 1st Party-Management moved for retrenchment of all its workmen there was no necessity to display seniority list of the workmen before resorting to the retrenchment. It has also been seriously contended that so far as the requirement of giving notice to the workmen is concerned, it is open to the employer to give such notice at any time after taking the decision to retrench the workmen either before or after obtaining the permission. Alternatively, the employer may give three months notice of retrenchment to the workmen on obtaining permission to retrench and then retrench them on the expiry of the period of three months or retrench them forthwith on obtaining the permission by paying three months wages in lieu of the notice. Apart from giving such a notice or paying wages in lieu of the notice, the employer is also required to pay compensation to the workmen for the proposed retrenchment. In that view of the matter retrenchment compensation and notice pay having been offered or paid to all concerned workmen, due compliance of the impugned order is made and the 2nd party-Union having been duly noticed and heard prior to the impugned order, the Tribunal should not interfere in the impugned order.

On a close scrutiny of the oral evidence adduced by the management witness Shri Saroj Ranjan Rath and documents exhibited on its behalf it is crystal clear that no individual concerned workmen was served with any notice or copy of the application in the format prescribed under Rule 76A(1) seeking permission to retrench the workmen. It is also elicited from the cross examination of M.W.-1 that the Management did not prepare the inter-se seniority list of the

workmen before moving the application for retrenchment. No evidence is available to suggest that such list was displayed in any notice board. He has admitted categorically that except Ext.-1 which is the copy of application moved before the appropriate Government seeking permission to retrench the workmen no other document was filed before the authority. Though, he has categorically stated that copy of such application was served on each concerned workmen, he fails to remember if receipt in regard to service of notice to each workmen was obtained or not. It seems that no document or proof or cogent evidence is available to hold that copy of such application for retrenchment was served on each of concerned workmen. The witness appears to have conceded in his cross examination that such retrenchment notice was only displayed in the notice board and each concerned workmen were not issued with separate notice. There is also no evidence on behalf of the Management to establish that three years balance sheets were filed before the appropriate government along with the application for retrenchment. Admittedly, the application of retrenchment before the appropriate government was not in proper format as required under Rule 76A(1) retrenchment compensation and three months notice pay were offered to the concerned workmen after impugned permission was accorded to the Management.

Section 25-N provides conditions precedent to retrenchment of workman -

1. No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,- (a) the workmen has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

2. An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall be served simultaneously on the workmen concerned in the prescribed manner.

3. Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant such permission and a copy of such order shall be communicated to the employer and the workmen.

4. .....

5. An order of the appropriate Government, or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

6. The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication.
Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference."

Sub-section 3 provides that the appropriate Government or the specified authority is vested with the power to grant or to refuse permission to the employer to retrench the workmen. But before granting or refusing to grant permission, the authorities are required to – (i) make an enquiry into the question of retrenchment as it may think fit; (ii) give a reasonable opportunity of being heard to (a) the employer, (b) the workmen concerned and (c) all persons interested in such retrenchment; (iii) consider – (a) the genuineness and adequacy or reasons stated by the employer, (b) the interest of the workman and (c) other relevant factors; and (iv) pass an order granting or refusing to grant the permission (v) such order should – (a) state in writing reasons for the decision; and (b) communicate such reasons to the employer as well as to the workmen. The power has to be exercised on an objective consideration of the relevant facts after affording an opportunity of hearing to the parties having interest in the matter and reasons have to be recorded in the order i.e. passed. Such opportunity of hearing is provided on the principle of natural justice. Since the proposed retrenchment would affect the workmen, each of them ought to have been served with notice of the application. Further, the section requires the authority to pass a speaking order on an objective consideration of relevant facts after affording an opportunity to the parties concerned. It cannot be unnoticed that the above proviso is incorporated to prevent hardship of unemployment to those already employed. Hence, notice to each individual concerned workmen is a must before such application for permission is being taken into consideration by the appropriate authority. In the case at hand it is apparent that each of concerned workmen was not served with the retrenchment notice or such application seeking permission to retrenchment prior to passing of the impugned order. As such, it can safely be concluded that opportunity of heard was

not afforded to all concerned workmen except the 2nd party-Union. Mere notice to the 2nd party-Union in this regard is not sufficient as no such condition is incorporated in the above provision. Besides, there is no cogent evidence or any material from which it can be concluded that all concerned workmen were members of the said Union and in that view of the matter notice to the Union would be sufficient as a notice to each workmen. That apart, other requirements like display of inter-se seniority of the workmen and filing of balance sheet of consecutive three years of the company were not complied with while application for retrenchment was moved. When the basic principles of natural justice was not complied with while passing the impugned order, the same cannot stand or be sustainable in the eye of law.

Law is well settled that if a statutory provision prescribes a particular procedure to be adopted by an authority to do an act, the same should be done in that particular procedure only. If such procedure is not followed then action of the authority can be held null and void. In the case between Mackinon Machenzie & Company Ltd. –versus- Mackinon Employees' Union reported in SC 2015 LLR 337 and in the case of Raj Kumar –versus- Director of Education & Ors. reported in SC 2016 LLR 561, the Hon'ble Apex Court have set out that non-compliance of the statutory provision while retrenching an employee is an unfair labour practice and retrenchment on the basis of such unfair practice is to be seriously dealt with. Though, there was a ground for the Management to move an application to retrench workmen due to expiry of the mining lease and pendency of its renewal, but the same ground does not confer any right to the Management to by-pass the statutory provisions to obtain a permission to retrench the workmen. The authority seems to have over-looked the requirements of the Section 25-N while passing the impugned order. Hence, for the reasons discussed above the order dated 02.03.2015 granting permission to retrench the workmen is not sustainable in the eye of law and as such the same is set aside.

Coming to the point or issue to what relief the concerned workmen are entitled to, it is not out of place to mention here that as per the settled principles the workmen are deemed to be continuing in service. However, at the same time it cannot be over-sighted that the mining activities of the Management was ceased due to pendency of the renewal of the lease and the activity commenced with effect from 15.11.2016. The workmen did not render any service to the Management after their retrenchment till the mining activities was started. The impugned order reveals that the Union proposed for payment of 50% wages to the workers for the period of next one year when the application for retrenchment was moved and the matter was head prior to the impugned order but, the proposal was not acceptable to the Management. Having regard to the above fact and circumstance it is felt just and appropriate that the retrenched workmen would be entitled to receive 50% of the monthly wages to which they were receiving prior to their retrenchment for the period of their unemployment. Besides, they are entitled to other service benefits. The notice pay and retrenchment compensation, if any paid to them is to be adjusted against their entitled wages and benefits.

The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 25 मई, 2018

**का.आ. 894.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 18/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.05.2018 को प्राप्त हुआ था।

[सं. एल-30011/63/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2018

**S.O. 894.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2013) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Limited and their workman, which was received by the Central Government on 21.05.2018.

[No. L-30011/63/2012-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM**

**Present :** Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B.
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

**Ref. Case No. 18 of 2013**

**In the matter of an Industrial Dispute between :-**

The Management of I.O.C.L. Guwahati Siliguri Pipeline,
Noonmati, Guwahati …Management

**-Vrs-**

The workman Sri Dignata Das rep. by the General Secretary,
All India Trade Union Congress, Assam State Committee, Guwahati …Workman

**APPEARANCES :**

For the Workman : Mr. Diganta Das, the concerned workman

For the Management : Mr. S. Mazumder, Manager (HR) IOCL, GSPL, Guwahati.

Date of Award: 07.05.2018

**AWARD**

1. The present matter was referred by the appropriate Government vide order dated 31.1.2013 with the following schedule:

**SCHEDULE**

***"Whether the action of the management of IOCL, G-S-Pipeline Guwahati in filling up the vacancy of Engg. Assistant (Opt) Gr.IV directly as per advertisement dated 07.08.2011 without giving chance to deptt. Employees as per 3(e)(iii) of agreement dated 04.12.1996 is justified? If not, what should be relief for the members of Union eligible in this category?"***

2. After receipt of the reference, notices were issued to the relevant parties and they appeared. By submitting written statement the workman narrated his side of the fact by stating that the management violated the promotion policy in filling up the vacancy of one Engineering Assistant (opt) Grade-IV by directly advertising the vacancy and recruiting the employee through direct recruitment. It was further stated that as per policy declared by the Management, for selection in Cluster B of Grade-IV, 40% of the vacancies are to filled up by direct recruitment, another 40% to be filled up through promotion from eligible employees working in Cluster A having minimum educational qualification as well as induction level training and the remaining 20% are to be filled up by way of promotion from among those employees in cluster A who are matriculate but do not have any technical qualification. The aforesaid policy was framed after memorandum of settlement dated 04.12.1996 between the management of IOCL and their workmen represented by the IOCL Mazdoor Union, Guwahati Siliguri Pipe Line. The concerned workman has been aggrieved because of the action of the management in filling up the vacant post by way of direct recruitment by ignoring the right of the employee in getting promotion to the aforesaid post. It has been further stated that the management has been continuously filling up the posts in grade-IV of Cluster B by way of direct recruitment ignoring claims of serving employees who are working as Cluster-A. When the concerned employee learnt that the management was going to fill up the vacant post by way of direct recruitment, he made an application dated 26.08.2011 to the Deputy General Manager, IOCL, G.S. Pipeline, Guwahati ventilating his grievance. The workman stated that his petition was not considered. Thereafter, he prayed before the Regional Labour Commissioner (C), through the General Secretary, AITUC, Guwahati, Assam. The Regional Labour Commissioner (C), Guwahati held conciliation proceeding but when the conciliation proceeding ended in failure he sent a "conciliation failure report" to the Ministry and in turn the appropriate Government referred this matter to this Tribunal for decision. In the reference the appropriate Government wanted to know whether the action of the management in filling up the vacancy of Engineering Assistant, Grade-IV in Cluster-B by direct recruitment without giving chance to the Departmental employees as per 3(e)(iii) of agreement dated 04.12.1996 is justified or not and if not, what relief the concerned workman is entitled to.

3. The management side submitted written statement denying the contention of the workman. They denied violation of the policy of the Company in regard to filling up of the concerned vacancy. Apart from that another point raised by the management was that in absence of the workman who was directly recruited in the concerned vacant post, this

reference is bad for non-joinder of necessary parties. Referring to the memorandum of settlement dated 04.12.1996 the management stated that for the purpose of this dispute Clause 3 (d) and (e) would be relevant and aforesaid Clauses would show that the basic requirement for promotion/selection from Cluster A to Cluster B is based on induction level qualification. It was further stated that for candidates possessing induction level qualification two sources of recruitment are envisaged namely 40% directly as per clause 3(e)(i) and 40% from the eligible employees from Cluster-A who possess the induction level qualification. According to the management the balance 20% in the form of concession as reflected in Clause 3(d) was given to those employees in Cluster A who do not possess the minimum induction level qualification for appointment in Cluster-B. It was further stated that in absence of suitable employees in Cluster-A the management had no other alternative but to appoint candidates possessing the minimum induction level qualification from outside. The management admitted that out of 25 vacancies filled up from the effective date of the MOS dated 04.12.1996 till prior to the advertisement dated 07.08.2011 ten vacancies were filled up from amongst the departmental candidates in 20% category and thus more than the earmarked numbers of posts were filled up from departmental candidates. Though none of the said 10 candidates possessed minimum induction level qualification of Cluster-B as per 3(e) (ii) of MOS they possessed the minimum induction level qualification as mentioned under 3(e)(iii) of the MOS. It was further stated that minimum induction level qualification for Cluster-B is Diploma in Engineering as per Circular/inter office memo dated 25.04.2000 wherein the said requirements were clearly laid down and none of the aforesaid 10 candidates possessed the minimum induction level qualification of Cluster-B. It was further stated that for the posts of Technician-IV as mentioned in the Circular dated 25.04.2000, later-on re-designated as Engineering Assistant, other qualification like B.A, B.Sc etc. could not be considered to be equivalent to a Diploma in Engineering. According to the management, 10 vacancies out of 25 were so far filled up from the departmental candidates from the quota of 20% reserved for the employees who did not have the induction level Training nor had the Diploma in Engineering and according to the management on simple calculation it would be found that the management had already promoted more than 20% of such employees in Cluster-B. In respect of the filling up of 40% of the vacant posts to be filled up in Cluster-B through promotion, according to the management, the eligible employees in Cluster-A having requisite qualification were not available and hence, the recruitment had to be made directly. The management reiterated that they had not violated any promotion policy issued by them and the claim of the workman deserves to be dismissed. After submission of the written statement by the management, the Union submitted an Additional Written Statement. According to the workman the 10 cluster-A employees who were promoted to Cluster-B in which 3 persons are simple matriculate and 20% of that category was yet to be filled up and the other 7 employees who got promotion, allegedly under 20% category, could not be held to be promoted under 20% category because they had superior qualification. The Petitioner has prayed for dismissing the contention of the management.

4. Two witnesses were examined on behalf of the workman and the management examined one witness. Several documents were also exhibited by the parties.

5. Workman witness No.1 is the concerned workman Sri Diganta Das stated in his evidence that on 29.12.2005 he was appointed by IOC, Guwahati Siliguri Pipe Line ( GSPL) at Bongaigaon Pumping Station as helper. In the year 2007 he was transferred to Guwahati Pumping Station, IOC, GSPL on medical ground at his instance. In 2010 in the month of July he was promoted as Technical Attendant-II. In the year 2011 one vacancy of the post of Engineering Assistant arose in Guwahati Pumping Station. For appointment to the said post the Management published open advertisement in the Newspapers. In the year 1996 a Settlement was arrived at between the Management and the Union regarding promotion policy of the staff of the IOC. In that settlement it was decided vide Clause-3(e)(i) that 40% of the total vacant post of Engineering Assistant would be filled up by direct recruitment, (ii) 40% by selection from the employees possessing induction level qualification in cluster 'A' and (iii) 20 % of the post would be filled up from the candidates from the existing eligible employees with minimum qualification of matriculation. Exhibit-1 is the copy of the Memorandum of Settlement between the Management of IOC Ltd., R & P Division-Pipelines and their workmen represented by Indian Oil Corporation Mazdoor Union, GSPL, Guwahati. Exhibit-1(1) is the relevant clauses relating parameter for selection from cluster 'A' to cluster 'B'. From 1997 the Management recruited altogether 27 persons against the post of Engineering Assistant. Exhibit-2 ( 3 pages) is the letter No.GSPL/HR/131/1872 dated 8.11.2011 including the list of appointees in GSPL with effect from 01.07.1996 till date. Among the total number of 27 appointees altogether 10 candidates were selected from departmental employees out of which 3 candidates came under 20%, and rest 7 candidates came under 40% departmental category as per Clause-3(e)(ii) of the MOS, Exhibit-1. The contention of the Management that the said 10 numbers of appointees come under the 20% category of Clause-3(e)(iii) of Exhibit-1, was challenged by the workman. He further stated that from the list appended in Exhibit-2, it is found that out of the 25 appointees only 3 candidates had qualification of HSLC (Matric) and rest of the appointees were having qualification above matriculation level. In the year 2011, consequent upon publication of the advertisement for the post of Engineering Assistant he personally made a representation before the Management praying for recruiting the departmental candidates instead of recruiting from outside by making an advertisement. Exhibit-3 is the copy of his representation but the Management did not pay heed to it. Thereafter he moved the AITUC, which took up my matter and moved the RLC(C), Guwahati. Accordingly, RLC(C), Guwahati invited both the parties and held conciliation but it failed. Thereafter, the RLC (C), Guwahati referred the matter to the Ministry. During the conciliation RLC (C), Guwahati advised the Management not to proceed with the

advertisement for recruitment to the post of Engineering Assistant but the Management did not comply with it. The RLC(C), Guwahati also proposed to get the matter settled by appointing Arbitrator but the Management did not agree to it. The Management was thus denying promotion to the departmental candidates who have got no qualification of Diploma Engineering. Thus the Management, according to the workman, deprived him from getting the benefit of promotion and the action of the Management was illegal and arbitrary. According to him altogether 5 numbers of post under 20% quota category is due to the departmental candidates but the Management is not filling up the said posts by promotion as per provision of Clause-3(e)(iii) of Ext-1.

6. During cross-examination the witness admitted that he is matriculate and he is working as Technical Attendant-II. He also admitted that he had no technical qualification. He also admitted that he was aware that that I.O.C.L. has a parallel channel through which employees in non-executive cadre are promoted in case they acquire higher qualification. He further admitted that the required qualification for fresh appointment to the post of Engineering Assistant (operation) is Diploma in Engineering. He further admitted that he had not challenged the appointment of Kishore Das recruited as Engineering Asstt., but opposed the appointment of Mrinal Patgiri. He also admitted that Diploma in I.T.I, B.A, B.Sc, Diploma in Engineering are not equivalent degrees/diploma. He further admitted that 10 numbers of candidates have been promoted to Cluster-B but none of them possess Diploma in Engineering and 7 of them possessed qualification higher than matriculation. The memorandum of settlement dated 04.12.1996 has been exhibited as Exhibit-1. Exhibit-2 is a letter written by the management to the RLC (C) informing the process of selection/recruitment to Grade-IV of Cluster-B in Guwahati Siliguri Pipe Line with effect from 01.07.1996 i.e. from the date of effect of the Memorandum of Settlement. Exhibit-3 is the representation submitted by the concerned workman to the management. Exhibit-4 is the guidelines of recruitment in non-officer post of the IOCL, Guwahati Siliguri Pipeline.

7. Examination-in-chief of Workman Witness No.2 Sri Amal Kumar Barman is substantially same as that of the W.W No.1. He also narrated the departmental rules in regard to filling up of posts. During cross-examination he stated, among others, the following:- *"As per the latest specified qualification for recruitment to the post of Engineering Assistant there is no departmental candidate at present having the requisite qualification for induction in Cluster-B, however, there are candidates who are having experience and technical qualification to perform the engineering job……..Management has allowed scheme for obtaining higher qualification by departmental candidates while in service and some of the employees have applied for permission to obtain higher qualification. Whether the workman Diganta Das has obtained the permission for acquiring higher qualification I donot know. So far I know one of our colleagues Montu Gogoi secured the requisite qualification AMIE in course of his service and he has been promoted to the higher post accordingly. The management has extended all opportunities to obtain higher qualification by departmental candidates."*

8. Management witness Sri Shubhra Mazudar denied the allegations brought by the concerned workman in his evidence and narrated the promotion policy (Exhibit-1) and also stated that more than 20% of the Cluster-B employees have been recruited from among those Cluster-A employees who had no Technical qualification and in regard to 40% of the posts in Cluster-B which are required to be filled up by way of promotion from the in service candidates, years after years no such candidates were found who had requisite qualification and that is why of those posts had to be filled up directly. The witness further stated that the degree of B.A., B.Sc, etc. could not be considered to be equivalent to a Diploma in Engineering in respect of the working employees of IOCL. It was further stated by the witness that Clause 3(e)(ii) of Exhibit-1 is for those employees who had joined in Cluster-A with minimum induction level qualification of matriculation but subsequently acquired the induction level qualification of Cluster-B namely Diploma in Engineering. It was further stated that the quality of the candidates could not be compromised and therefore the minimum induction level qualification is always insisted upon. It was further stated that if sufficient number of candidates in Cluster-A acquire the induction level qualification of Cluster-B then the management would definitely appoint such candidates in Cluster-B in the 40% quota under Clause-3(e) (ii). But the 20% quota under Clause-3(e) (iii) which is a concession could not be further exceeded as it would mean compromising with the quality of the inductees. According to the management witness 20% quota for promotion from the matriculate candidates in Cluster-A has already been filled up and hence, the workman was not entitled for consideration for promotion since he did not have the induction level training in and was merely a matriculate.

9. During cross-examination the management witness admitted that the 10 departmental candidates were promoted to Cluster –B out of which 3 were only matriculate and remaining 7 were higher than matriculate. The witness denied the suggestion that the management failed to comply with the MOS dated 4.12.1996 (Exhibit-1).

10. The matter was conducted by the parties themselves and no Advocate was engaged in this case. The workman himself argued the matter on his behalf and stated that the management had apparently violated the Promotion Policy (Exhibit-1) in regard to selection of candidates to Cluster-B from Cluster-A of Grade-IV. He referred to the Clause-3(e)(i)(ii)and (iii) of Ext-1 and stated that out of the total post in Cluster-B the management had the right to fill up 40% of the vacancies by direct recruitment and the remaining 60% were to be filled up from departmental candidates. He however stated that out of that 60%, 40% of the posts would go to those eligible employees who possess induction level

qualification. He further submitted that the remaining 20% are to be filled up from among those employees who possess at least the qualification of Matriculation. He further argued that his claim for promotion to Cluster-B is against the 20% since he is a Matriculate and does not possess the induction level qualification required for Cluster-B. He further argued that when he came to know about the advertisement for direct recruitment issued by the management for filling up the vacancy in Cluster-B he submitted a representation stating his claim before the appropriate authority but the said representation was not even considered. He also referred to Exhibit-2 (3 pages) wherein the names of those candidates/employees have been mentioned who were appointed in Grade-IV (Cluster-B) by promotion as well as by direct recruitment. Referring to the said list he further submitted that only 3 of those employees were recruited so far in 20% category and hence, his claim for promotion under the 20% category was justified and legal. He further said that out of 25 persons recruited/promoted so far in cluster-B, 5 posts ought to have been filled up from the category of 20% whereas the management filled up only 3 posts from that category. While concluding his argument he prayed for allowing relief to him including the relief of retrospective effect of promotion.

11. The management side was represented by Sri Shubra Mazumder, Manager, HR of I.O.C. Ltd., Guwahati Siliguri Pipelines. He disagreed with the submission made by the workman and his interpretation of Ext-1 & 2. He stated that the 40% of the selection in Cluster-B are to be made from among the eligible employees having minimum educational qualification as well as induction level qualification. He further stated that the induction level qualification for working in Cluster-B is Diploma in Engineering. He further stated that any other general qualification like B.A, B.Sc could not be equated with a Technical qualification namely Diploma in Engineering. Further, referring to the list of the candidates recruited so far he pointed out that out of the 25 candidates recruited so far 10 have been filled up from among the departmental candidates and all of them were selected against the category of 20% and thus the quota of 20% has already been exceeded too far. He further stated that since none of those departmental candidates had the minimum qualification of Diploma in Engineering they could not be considered to be promoted under 40% category.

12. On perusal of the list (enclosure of Ext-2) it appears to me that candidates mentioned in serial numbers 1, 2, 3, 4, 8, 9, 10, 11, 12, and 13 are the departmental candidates who were promoted to Cluster-B from Cluster-A. It is clear that none of them had the induction level qualification i.e. Diploma in Engineering. The main question which arises for determination now is whether Post Matriculate qualification like B.A, B.Sc and High Secondary can be considered equal to Diploma in Engineering. Ordinarily, there cannot be any comparison between two qualifications of different streams unless such comparison is required in the backdrop of some context. In the present matter the context is the question of filling up certain posts in the IOCL in technical side. Hence a general qualification like B.A or B.Sc could not be considered to be equivalent to a technical qualification like Diploma in Engineering which is said to be the induction level qualification. On perusal of Ext-2 which contains list of the names of 25 candidates so far recruited in Cluster-B, it is apparent that 10 posts have been filled up from among the departmental candidates and none had the qualification of Diploma in Engineering. The natural inference of the above would be that all those posts were filled up from 20% category and the quota of that category have already been exceeded too far. Another point which requires consideration is that the management has been giving the in-service employees opportunity to obtain the induction level qualification. This fact was apparent from the evidence of the work man witness no. 2 the relevant part of which may be quoted below:- *"Management has allowed scheme for obtaining higher qualification by departmental candidates while in service and some of the employees have applied for permission to obtain higher qualification."*

13. From the aforesaid discussion it is absolutely clear that the quota of 20% for filling up the vacancies in Grade-IV Cluster-B has already been exceeded too far. Hence the claim of the concerned workman to be promoted to Cluster-B against 20% departmental quota does not appear to be justified. Accordingly, the action of the management as referred to in the schedule of the reference does not appear to be unjustified or illegal. The workman, therefore, is not entitled to any relief. The reference is accordingly, disposed of with a no relief Award.

Given under the hand and seal of this Tribunal on 7th day of May, 2018.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 25 मई, 2018

**का.आ. 895.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 56/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.05.2018 को प्राप्त हुआ था।

[सं. एल-11011/6/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2018

**S.O. 895.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 56/2012) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Airport of Authority of India and their workman, which was received by the Central Government on 21.05.2018.

[No. L-11011/6/2011-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 26th April, 2018

**Reference: (CGITA) No. 56/2012**

The Director,
Airport Authority of India,
SVPI Airport,
Ahmedabad (Gujarat) …First Party

**V/s**

The General Secretary,
Gujarat Mazdoor Panchayat,
Sharam Shakti, Opp. Premier Shopping Centre,
Near Syndicate Bank, Mirzapur Road,
Ahmedabad (Gujarat) …Second Party

For the First Party No : Shri D.C. Gandhi Associates

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-11011/6/2011–IR(M) dated 23.02.2012 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

"Whether the action of the management of Airport Authority of India, Ahmedabad in terminating the services of Shri Rameshbhai Fulaji, Rahulbhai Kantilal, Hasmukhbhai Mainlal, Smutbhai Gangaram and Bharatbhai Jayantilal is legal and justified? What relief the workmen are entitled to?"

1. The reference dates back to 23.02.2012. After issuing notice Ex. 2 to both the parties, the first party submitted the vakalatpatra Ex. 4 on 10.05.2012 of his advocate M/s D.C. Gandhi Associate, A solicitor firm. Despite a wait of more than 6 years, the second party union or the workmen detailed in the schedule of the reference Ex. 1 have not preferred to submit the statement of claim. It is also noteworthy that despite service of notice, the second party union or the aforesaid workmen also never appeared. Thus it appears that the second party union or their workmen are not willing to prosecute the reference.

2. Thus the reference in the absence of the statement of claim of the second party union or their workmen, is disposed of with the observation as under:"the action of the management of Airport Authority of India, Ahmedabad in terminating the services of Rameshbhai Fulaji, Rahulbhai Kantilal, Hasmukhbhai Mainlal, Smutbhai Gangaram and Bharatbhai Jayantilal can be said to be legal and justified"

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 25 मई, 2018

**का.आ. 896.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इण्डिया एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 80/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.05.2018 को प्राप्त हुआ था।

[सं. एल-11011/2/2013-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2018

**S.O. 896.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2013) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Airport of Authority of India and other and their workman, which was received by the Central Government on 21.05.2018.

[No. L-11011/2/2013-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd April, 2018

**Reference: (CGITA) No. 80/2013**

1. The Airport Controller,
   Airports Authority of India,
   Dumas Road, Surat (Gujarat)

2. M/s Jay Mech,
   1/661, Bunder Street, Behind Civil Court, Nanpura,
   Surat (Gujarat) – 395001 …First Party

**V/s**

The Secretary,
Surat Jilla Bhartiya Mazdoor Sangh,
B/206, Capital Complex, Beside Pratik Row House,
Hany Park Road, Adajan,
Surat (Gujarat) …Second Party

For the First Party No : Shri C.S. Naidu Associates

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-11011/2/2013–IR(M) dated 11.04.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

"Whether the demand of Surat Jilla Mazdoor Sangh, Surat for regularisation of services of S/Shri Patel Dineshbhai Balubhai, Patel Ronak Chimkabhai, Pateliya Dharmendra Govind and Patel Nareshbhai Naginbhai in the establishment of Airport Authority of India, Surat from the date of their joining in service by treating the contract between the management of Airport Authority of India, Surat and the contractor M/s Jay Mech., Surat as

Sham, bogus and mere paper arrangement is legal, proper and just? What relief the concerned workmen are entitled to?"

1. The reference dates back to 11.04.2013. After issuing notice to both the parties, the first party submitted the vakalatpatra Ex. 3 on 23.04.2018 of his advocate M/s Naidu Associate, A solicitor firm. Despite a wait of 5 years, the second party union or the workmen detailed in the schedule of the reference Ex. 1 have not preferred to submit the statement of claim. It is also noteworthy that despite service of notice, the second party union or the aforesaid workmen also never appeared. Thus it appears that the second party union or their workmen are not willing to prosecute the reference.

2. Thus the reference in the absence of the statement of claim of the second party union or their workmen, is disposed of with the observation as under:"the demand of Surat Jilla Mazdoor Sangh, Surat for regularisation of services of S/Shri Patel Dineshbhai Balubhai, Patel Ronak Chimkabhai, Pateliya Dharmendra Govind and Patel Nareshbhai Naginbhai in the establishment of Airport Authority of India, Surat from the date of their joining in service by treating the contract between the management of Airport Authority of India, Surat and the contractor M/s Jay Mech., Surat as Sham, bogus and mere paper arrangement cannot be said to be legal, proper and just."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 25 मई, 2018

**का.आ. 897.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 52/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.05.2018 को प्राप्त हुआ था।

[सं. एल-30012/10/2013-आईआर (एम),

सं. एल-30011/10/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2018

**S.O. 897.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2013) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and other and their workman, which was received by the Central Government on 21.05.2018.

[No. L-30012/10/2013-IR (M),

No. L-30011/10/2012-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 25th April, 2018

**Reference: (CGITA) No. 52/2013**

1. The Security Manager (I/C),
ONGC Ltd., Avani Bhavan, Chandkheda,
Ahmedabad (Gujarat)

2. The Dy. General Manager (HR),
ONGC Ltd., IRS, Avani Bhavan,
Chandkheda, Ahmedabad (Gujarat)

3. M/s Vishwambi Security Agency Pvt. Ltd.,
406, MV House, Opposite Hathising Wadi,
Nr. Swamy Narayan Chowk, Shahibaug,
Ahmedabad (Gujarat) – 380004 …First Party

**V/s**

The President,
Glorious Petroleum Mazdoor Sangh,
A-3, Priya Darshani Society, Nr. New Railway Colony,
Sabarmati, Ahmedabad (Gujarat) – 380019 …Second Party

For the First Party No : Shri K.V. Gadhia

For the Second Party : Shri R.S. Sisodiya

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/10/2013–IR(M) or L-30011/10/2012-IR(M)dated 27.02.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

"Whether the demand of the President, Glorious Petroleum Mazdoor Sangh, Ahmedabad for regularisation of the workman Shri Kanji Sagarbhai Desai, Security Guard is legal and justified? What relief the workman is entitled to?"

1. The reference dates back to 27.02.2013. The second party submitted the statement of claim Ex. 6 on 25.07.2013. The first party no. 1 The Security Manager (I/C),ONGC Ltd., Avani Bhavan, Chandkheda, Ahmedabad (Gujarat) and the first party no. 2 The Dy. General Manager (HR), ONGC Ltd., IRS, Avani Bhavan, Chandkheda, Ahmedabad, jointly submitted the written statement Ex. 9 on 22.01.2013 and the first party no. 3 M/s Vishwambi Security Agency Pvt. Ltd.,406, MV House, Opposite Hathising Wadi, Nr. Swamy Narayan Chowk, Shahibaug, Ahmedabad submitted the written statement Ex. 10 on 06.02.2014 along with number of documents vide list Ex. 10. The second party has also submitted an application for interim relief Ex. 7 on 09.01.2014 along with number of documents to which all the first parties submitted their reply Ex. 13 and Ex. 11 on 06.02.2014 respectively.

2. The second party vide Ex. 14 also submitted the order of the Hon'ble High Court with a direction to adjudicate the dispute.

3. The Interim relief application was decided by the tribunal vide order Ex. 15 dated 26.03.2014 directing both the parties to maintain status quo till the disposal of the reference but unfortunately, despite knowledge of all the orders and proceedings as Shri R.S. Sisodiya who represented the second party throughout the proceedings used to come in the tribunal but he or the second party union or the workman since the date of passing of the aforesaid order Ex. 15 of interim relief application Ex.7, did not bother to lead evidence. Thus it appears that the second party union or its workman is not willing to prosecute the reference.

4. Thus the reference in the absence of the evidence of the second party union or its workman, is disposed of with the observation as under: "the demand of the President, Glorious Petroleum Mazdoor Sangh, Ahmedabad for regularisation of the workman Shri Kanji Sagarbhai Desai, Security Guard cannot be said to be legal and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 मई, 2018

**का.आ. 898.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 35/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.05.2018 को प्राप्त हुआ था।

[सं. एल-12011/01/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th May, 2018

**S.O. 898.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 29.05.2018.

[No. L-12011/01/2013-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE SHRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR**

**ID. No. 35 of 2013**

**Between :**

The Regional Secretary (case of M.K Bajpai)
Central Bank Staff Association,
331-A2/55, E-Block, Shyam Nagar, Kanpur.
Kanpur (U.P.)-208013

**And**

The Assistant General Manager,
Central Bank of India, Regional Office,
117/H-1/240, Pandu Nagar, Kanpur,
Kanpur (U.P.)-208022

**AWARD**

1. Central Government, MOL, vide notification no. L-12011/01/2013-IR (B-II) dated 17.04.2013 has referred the following dispute to this Tribunal for adjudication.

2. "Whether the action of the management of Central Bank of India, Kanpur in reduction of Basic pay and infliction of punishment of stoppage of 2 increments permanently of Shri M.K. Bajpai, Head Cashier is just, fair and legal? What relief the workman concerned is entitled to?"

3. The case setup by union on behalf of workman Shri M.K. Bajpai is that charge sheet per-se is illegal and not maintainable on the ground that the worker was not given any opportunity to reply the charges nor the reply against the charges was ever called by the discipline authority and the disciplinary authority without considering the reply of the worker directly appointed enquiry officer and presenting officer in the charge sheet itself which reflects preconceived mind of the discipline authority and the charge sheet is patently illegal and against the rules of natural justice as also against Para 19.1 of Bipartite settlement, as such charge sheet cannot form basis for awarding any punishment on the workman and punishment if any awarded to the workman is absolutely not in consonance with the rules of natural justice. At subsequent stage there was an amendment in the charge sheet by issuing an addendum dated 02.07.83 by means of which the worker was further charged for certain misconduct under clause 19(e) and 19(j) of the bipartite settlement dated 19.10.66. It is further alleged that the only date 29.08.83 was fixed by the enquiry officer for holding inquiry but the same was adjourned by the enquiry officer without fixing further date of hearing on the ground that charged simply is requesting for adjournment to enable him to negotiate with higher authorities under clause 19.12(e) of Bipartite settlement to which management representative has no objection. Worker has tendered a letter dated 10.10.83 accepting the guilt unconditionally. Thereafter by order dated 10.10.83 disciplinary authority invoking clause 19.12(e) of the Bipartite settlement has imposed punishment of stoppage of 3 increments permanently. The appellate authority in exercise of his power modified the punishment by stopping 2 increments permanently vide order dated 23.03.2004.

4. It is further submitted by the worker that anything that has not been enumerated in the rules governing the service conditions cannot be allowed to be sustained in the eye of law.

5. Worker has further alleged that Para 19.6 of Bipartite settlement deals with nature of punishment to be awarded to a workman who was found guilty of gross misconduct. Sub clause (d) clearly stipulates "have his increment stopped". But when the punishment imposed upon the workman is read coupled with clause (d) (supra) it emerges out here that no particular period has been provided in clause (d) of clause 19.6 of BPS. Therefore, the punishment

awarded to the workman is not in consonance with the rules of service condition as such punishment of stoppage of two increments permanently does not hold good and is liable to be set aside.

6. It is further submitted by the worker that the admission of guilt made by the workman is not coming in the way of examining the legality and proprietary of the charge sheet and punishment imposed on the workman because according to the settled legal position, if any, illegality has been committed by the disciplinary authority the same cannot be allowed to persist for ever and the courts / tribunals are fully competent to examine the same and if it is found that either the charge sheet or the punishment suffers from illegality it is always open for the courts to rectify the illegality appearing in the charge sheet. Therefore, this Hon'ble Court is fully competent to cure the legal defect appearing in the charge sheet as well as in the punishment by setting aside the same.

7. In the end, worker has prayed that the punishment awarded by disciplinary authority and modified by the appellate authority is liable to set aside and the workman be held entitled for the entire arrears and wages together with full pay and allowances for the period he remained under illegal suspensions.

8. Opposite party has filed reply in which bank has alleged that the reference is bad in law as there is no mention of date with regard to the punishment awarded to the worker. The union has deliberately raised the present dispute at belated stage. This is nothing but an abuse to the legal process as well as to create pressure upon the management which is not tenable. It is stated that after considering the admitted guilt of worker punishment of stoppage of 2 increments permanently was awarded by the appellate authority and the worker after receipt punishment order kept silent for years together and at the time of retirement from bank service that is after passing of 28 years the dispute was raised which is legally not maintainable. Worker has concealed the relevant fact that he agreed that Rs 24,100/- as basic pay would be provided by the bank to the worker in compliance of order dated 30.09.13 passed by controlling authority under the Payment of Gratuity Act 1972 has already been provided by the management to the worker as such reduction of basic pay of the worker is far from the truth and not maintainable. Lastly it is alleged that punishment order is just and fair and requires no interference. Therefore the claim of the union is liable to be rejected.

9. Worker has filed letter dated 19.02.1983 given to chief manager, Central Bank of India, paper No. 25/4, Copy of attendance registers for the month of November 1982, paper no.25/5, information regarding reduction of subsistence allowance, paper no. 25/6, letter of worker dated 11.10.83, paper no. 25/7, Copy of punishment order passed by Disciplinary authority, paper no. 25/8, and letter of worker dated 12.10.83 to disciplinary authority paper no. 25/9. These documents were filed by the worker along with affidavit in evidence.

10. Management bank has filed original letter given by worker dated 10.10.83 admitting his guilt, paper no.17/1, and its copy paper no. 19/1. Management has also filed charge sheet issued to worker paper no. 15/3-4 and photocopy of order of appellate authority paper no. 15/5-6 and extract of bipartite settlement paper no. 15/7 and has also filed copy of order passed by ALC(C) paper no. 33/1-3.

11. On behalf of worker Sri R.K. Mishra as Union leader has been examined and worker M.K. Bajpai has also examined himself as WW2. On behalf of management Sri Jogeshwar Bajpai officer of the bank has been examined as MW1.

12. I have heard the parties and perused the record.

13. W.W.1 Sri R.K. Mishra, in his affidavit filed in evidence has stated that charge sheet is illegal and also stated that punishment awarded to worker Shri M.K Bajpai is not tenable as it is against the provision of para 19.6 of Bipartite settlement.

14. In his cross examination w.w.1 has stated that he is the Regional Secretary of the union and admitted paper no. 15/3-4 to be charge sheet issued to the worker. He has also deposed that he has no knowledge of any rule in which show cause notice is to be issued before issuance of charge sheet. He has admitted the letter of admission of guilt paper no. 17/1 given by worker and has stated that before imposing punishment worker should have been issued show cause notice which is not given in this case. In Bipartite settlement there is provision for stopping the increment but not permanently. He has admitted that appellate authority released one increment from the punishment awarded by the Disciplinary authority. He has filed case before ALC(C) at the time of preparation of retirement benefit where in controlling authority has corrected basic pay of worker Shri Bajpai from Rs 23,300 to Rs 24,100/- & passed order for payment of gratuity. In the reference as regards reduction of Basic pay it was corrected by the order dated 30.09.13 passed by ALC(C) Kanpur. He further admitted that he was satisfied with the order passed by the appellate authority but was not satisfied for stopping increments permanently. He further stated that from 1984 to 2012 several representations were given to wash out the word "permanently" but no letter has been filed in the case.

15. Worker M K Bajpai has examined himself as WW2 and in his evidence filed on affidavit he has stated that he was wrongly suspended for the alleged incident occurred on 10.11.82 as worker himself was on leave from 5.11.82 to

11.11.82 and charge sheet was issued after six months of alleged incident and after dropping the matter as agreed by worker and the Branch manager on 19.02.83 in writing. He was falsely implicated as he was not present on date of incident and he was on leave. He has filed case no. 558 of 83 before competent authority under Payment of Wages Act. Thereafter he was pressurized by the bank officers to give in writing for compromise under para 19.12(e) of BPS so that he may be awarded punishment of warning or censure. Worker has given his consent. He was punished by disciplinary authority for stopping 3 increments against which he preferred appeal and in the appeal punishment was modified by stoppage of 2 increments.

16. In his cross examination he has admitted that his basic pay was treated as Rs 24,100/- in place of Rs 23,300/- in case of gratuity which he has received. He was not given any show cause notice proposing stoppage of 3 increments against which he has given letter to bank which is not on record but there is only punishment order. His grievance was that 3 increments were stopped permanently. He has filed copy of attendance sheet which shows that he was marked absent on 11.11.82.

17. On behalf of management Shri Jogeshwar Bajpai has been examined as MW1 who has stated in evidence on affidavit that charge sheet dated 24.05.83 as well as addendum dated 2.07.83 was served upon Shri M.K. Bajpai and thereafter enquiry was held against him and during course of enquiry worker submitted a letter 10.10.83 under para 19.12.(e) of BPS by which he voluntarily admitted his guilt unconditionally and was ready to accept any decision of management. Thereafter punishment order dated 11.10.83 was served upon worker by which stoppage of 3 increments was awarded which was modified into stoppage of 2 increments by the appellate authority. He further stated that worker kept mum and did not question both the punishment orders at relevant point of time and after 28 years he raised present dispute regarding infliction of punishment of stoppage of 2 increments permanently.

18. Worker Shri M.K. Bajpai has contested his case mainly on 3 grounds; that he was absent on the date of incident in the branch ; he was not issued any show cause notice proposing the punishment to be awarded on his application moved under para 19.12(e) of BPS and thirdly the punishment awarded was too severe and is against the rules of Natural Justice by imposing stoppage of increments permanently.

19. As far as his presence on the date of incident in the branch he may be absent from his official duties and there is no bar of his appearance in the branch on the date he was on leave and further he has admitted that he has moved application paper no. 17/1 to the disciplinary authority voluntarily admitting his guilt unconditionally which reveals that he has admitted his presence in the Bank as well as charges mentioned in the charge sheet. Thus it was very clear that he was present in the branch on the date of incident and committed misconduct and further he has admitted the guilt meaning thereby admitting the charges leveled against him.

20. As far as regarding show cause notice worker has argued that no show cause notice was issued to him proposing punishment on the application moved by him under para 19.12(e) of BPS. This fact has also been admitted by MW1 Jogeshwar Bajpai that disciplinary authority has not proposed any punishment but has imposed it. In the present facts and the circumstances there appears no necessity for issuing show cause notice by the disciplinary authority proposing punishment as in this case inquiry has began and during course of inquiry worker has himself moved application admitting his guilt unconditionally without issuance of any show cause notice by the bank. Under para 19.12(e) there is a provision for giving opportunity on hearing regarding nature of punishment and if the employee has admitted his guilt and requested for the same in such an event disciplinary authority is not required to issue show cause notice to the worker. But worker in his application under para 19.12(e) has not made any request for giving opportunity of hearing in the nature of punishment but has mentioned that he is ready to accept any decision of management.

21. As far as quantum of punishment is concerned if employee moves application admitting his guilt under para 19.12(e) of BPS punishment of dismissal/discharge cannot be awarded and disciplinary authority has awarded punishment of stoppage of 3 increments permanently which was modified in appeal to the extent of stoppage of two increments. Therefore it cannot be said that punishment was too severe or against the rules of Natural Justice. Ld. AR for management has contended that the dispute raised by worker is highly belated and as the worker has accepted the punishment awarded to him for almost 28 years at the time of fag end of his service he has suddenly raised the dispute and on this ground worker is not entitled to get any relief. The contention of authorize representative of management is supported by following authorities of Hon'ble Apex Court-

    a. 2006 lab IC 3046 Asstt. Engineer CAD Kota vs Dhankunwar

    b. 2010 lab IC Page 3726 Bhakra Beas Management Board Vs Krishna Kumar viz

22. According to the principle laid down by the Hob'ble Apex Court worker is not entitled for any relief.

23. Lastly the reference is also on the point of reduction of Basic pay by management of Central Bank of India. As this point has been settled by competent authority in a case under Payment of Gratuity Act by raising basic pay of

worker from Rs 23,300/- to Rs24,100/- and worker has taken benefit of it, therefore, this Tribunal need not to dwell on this point.

24. For the reasons given above the reference is answered against the union holding that worker is not entitled for any relief.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 29 मई, 2018

**का.आ. 899.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.05.2018 को प्राप्त हुआ था।

[सं. एल-12011/93/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th May, 2018

**S.O. 899.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 29.05.2018.

[No. L-12011/93/2012-IR (B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE SHRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR**

**ID. No. 34 of 2013**

**Between :**

Sri Pradeep Saraswat,
General Secretary, Uttar Pradesh Bank Karamchari Sangh,
45-A, Chandra Nagar,
Lalbangalow, Harjinder Nagar,
Kanpur.

**And**

The Deputy General Manager,
Punjab National Bank, Circle Office,
Birhana Road,
Kanpur.

**AWARD**

1. Central Government, Mol, New Delhi, vide notification no.L-12011/93/2012 IR(DU) dated 15.04.2013, has referred the following dispute for adjudication to this tribunal-

2. Whether the action of the management of Punjab National Bank in removing the workman Sri Santosh Kumar Shukla from the service vide order dated 29.03.2012 is just fair and legal? What relief the workman concerned is entitled to?

3. In short the case of the worker is that he was active trade union worker of the union and he continued making complaints against his superiors before the competent authority with regard to their fraudulent acts committed by them during the discharge of their official duty. The authorities of the bank with a view to victimize him placed the worker under suspension vide order dated 06.09.11 and subsequently served upon him a charge sheet dated 13.09.11. The disciplinary authority by order dated 21.09.11 instituted a departmental inquiry against the worker. It is alleged by the worker that during the course of departmental inquiry, he was not permitted to appoint his defence representative of his choice, he was not given fair opportunity to defend himself by the inquiry officer, he was also

not allowed to cross the management witnesses, the inquiry officer during the course of conducting the inquiry has not followed the rules of natural justice by preventing the worker from his defense. In this way the entire inquiry held by the inquiry officer is vitiated being violative of the provisions of rules of natural justice.

4. After conclusion of the inquiry, the inquiry officer submitted his inquiry report wherein he proved the charges against the worker and after hearing the worker on the show cause notice the disciplinary authority by order dated 29.03.2012 confirmed the punishment upon the worker whereby he was removed from the service of the bank with superannuation benefits, and the punishment was confirmed by the appellate authority also by order dated 30.08.2012.

5. In the charge sheet dated 13.09.11 it is alleged that around on 3.20 p.m. on 5.09.11 you entered in HRD Section of Circle Office Kanpur and demanded that the scholarship amount of your son and other dues should be paid to you from this office. You were told that all your dues etc., payable to you, shall be paid by your present branch and not from circle officer. Thereafter you started riotous and dis-orderely behavior and used un-parliamentary language like "SALE BHRASHTACHAR PHALATE HEIN' with Sri Raj Kumar Dy. Manager at HRD section Circle Office, Kanpur in-front of other staff members if this office.

6. Worker has also raised certain whimsical allegations against the authorities of the bank which need not to be discussed.

7. At last the union has prayed that the punishment awarded to the worker be set aside and the worker be directed to be reinstated in service with full back wages.

8. The bank has submitted reply against the claim petition of the worker admitting the fact that a departmental inquiry on the basis of charge sheet was held by the management wherein charges were found proved against the worker and the disciplinary authority concurred with the findings of the inquiry officer and thereafter the worker was issued a show cause notice and after considering the reply to the notice the worker was awarded punishment of removal with superannuation benefits from the service of the bank by the disciplinary authority and the appellate authority also agreed with the punishment awarded to the worker by the disciplinary authority.

9. Apart from above it is also pleaded that the inquiry officer has not violated rules of natural justice while holding inquiry against the worker, the worker was given ample opportunity of his defense by the inquiry officer and the disciplinary authority after considering the past record of the worker has rightly awarded the punishment upon the worker and it is also asserted that the management has not committed any illegality in the conduct of the inquiry against the worker, therefore, the entire claim of the worker is hypothetical and is liable to be rejected being devoid of merit.

10. The worker with his claim petition has filed a number of documents.

11. The worker has not filed any rejoinder and an endorsement has been made by him on the order sheet that he will not file any rejoinder in support of his claim.

12. On the basis of pleadings of the parties a preliminary issue regarding fairness of inquiry was framed on 12.08.15 and after hearing both the parties it was decided against the worker and in favor of management by order dated 02.08.16 wherein it was held that domestic inquiry conducted against the worker was just and fair and in accordance with the rules of natural justice.

13. Worker has filed several documents regarding inquiry along with his claim petition. Management has also filed copy of inquiry file documents and other relevant papers in connection with the inquiry.

14. Worker did not appear to argue the case his wife and son was heard. They simply argued that the worker is seriously ill and his family is running in financial crisis and also requested to reduce the punishment under section 11-A of the I. D. Act.

15. I have also heard the authorized representative for the management. It is argued that as the worker has been removed from service with order of granting superannuation benefits, this tribunal is not having jurisdiction to reduce the punishment under section 11-A of the Act as it is not a case of dismissal or termination from service or discharge of worker.

16. In a case of removal from service with granting superannuation benefits comes under the purview of CRS as such his punishment cannot be reduced.

17. On a perusal of inquiry file it appears that charge sheet was issued against the worker that worker on 05.09.11 at 3.20 p.m. entered in HRD section of Circle Office and demanded that the scholarship amount of his son and other dues should be paid by this office. He was told that the amount shall be paid by his present branch and not by circle office, then he started riotous and disorderly behavior and used un-parliamentary language like "Sale Bhrashtachar Failate hai".

18. In the domestic inquiry two witnesses were examined by the management which are M.W.1 C K Cirkar and M.W.2 Sri Bimal Tripathi where were cross examined by the worker and worker has not examined any witness in his defense.

19. Consider the evidence of the MW.1, Chief Manager/ Disciplinary authority has rightly concurred with the report of inquiry officer in which he has proved the charges against the worker and had decided to impose the punishment of removal from service with superannuation benefits and issued show cause notice to the worker. After considering the defense of the worker he confirmed the proposed punishment by order dated 29.03.12.

20. Worker has filed appeal against the punishment order passed by the disciplinary authority which was dismissed by the appellate authority by order dated 30.08.12, wherein the appellate authority has also considered the past record of worker and it has also been mentioned in the order of appeal showing that the worker was punished six times in the past and was placed under suspension four times as mentioned in the appellate order and the appellate authority has not found any ground for modification of punishment awarded to the worker.

21. From the perusal of record it appears that there seems no illegality in the order of disciplinary authority and the appellate authority which are passed after proper appreciation of evidence available on record. The tribunal is also of the view that the disciplinary authority and appellate authority has already taken a lenient view in awarding the punishment of removal from service with superannuation benefits, therefore, under the facts and circumstances of the case the tribunal is not inclined to interfere with the provisions of section 11-A of the Act.

22. Reference is therefore, answered against the union and in favor of the management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 900.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स उड़ीसा माइन्गि कॉरपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भूवनेश्वर के पंचाट (संदर्भ संख्या 24/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-29011/4/2004-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 900.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2004) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Orissa Mining Corporation Limited and their workman, which was received by the Central Government on 30.05.2018.

[No. L-29011/4/2004-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 24/2004**

No. L-29011/4/2004-IR(M), dated 29.04.2004

**Date of Passing Order – 18th December, 2017**

**Between:**

The Managing Director,
Orissa Mining Corporation Limited,
Bhubaneswar – 01, Orissa …1st Party-Management

**(And)**

The General Secretary,
Orissa Mining Workers Federation,
C/o. OMC, Limited, OMC House,
Bhubaneswar (Orissa) – 751 001 …2nd Party-Union

Appearances:

None … For the 1st Party-Management

None … For the 2nd Party-Union.

**ORDER**

No step is taken by the 2nd party-Union. The Management is present through its legal representative. It is seen from the record that the 2nd party-Union is not taking any steps in the matter since long and on the last occasion the learned Counsel on behalf of the Union has submitted in written that he has no instruction from his client. In the above premises the reference cannot linger for an indefinite period and it may be presumed that either the 2nd party-Union is not interested to pursue the matter or the dispute has been resolved amicably between the parties. Therefore, there is no alternative than to return the reference without adjudication. Accordingly the case is disposed of.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 901.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स उड़ीसा माइन्गि कॉरपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भूवनेश्वर के पंचाट (संदर्भ संख्या 54/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-29011/39/2004-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 901.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2004) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Orissa Mining Corporation Limited and their workman, which was received by the Central Government on 30.05.2018.

[No. L-29011/39/2004-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 54/2004**

No. L-29011/39/2004-IR(M), dated 12.08.2004

**Date of Passing Order – 18th December, 2017**

**Between :**

The Managing Director,
Orissa Mining Corporation Limited,
Bhubaneswar – 01, Orissa …1st Party-Management

**(And)**

The General Secretary,
Orissa Mining Workers Federation,
C/o. OMC, Limited, OMC House,
Bhubaneswar (Orissa) – 751 001 …2nd Party-Union

**Appearances:**

None. … For the 1st Party-Management

None … For the 2nd Party-Union

**ORDER**

No step is taken by the 2nd party-Union. The Management is present through its legal representative. It is seen from the record that the 2nd party-Union is not taking any steps in the matter since long and on the last occasion the learned Counsel on behalf of the Union has submitted in written that he has no instruction from his client. In the above premises the reference cannot linger for an indefinite period and it may be presumed that either the 2nd party-Union is not interested to pursue the matter or the dispute has been resolved amicably between the parties. Therefore, there is no alternative than to return the reference without adjudication. Accordingly the case is disposed of.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 902.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स राउरकेला इस्पात संयंत्र, सेल एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भूवनेश्वर के पंचाट (संदर्भ संख्या 71/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-43011/8/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 902.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Rourkela Steel Plant, SAIL and others and their workman, which was received by the Central Government on 30.05.2018.

[No. L-43011/8/2011-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 71/2012**

**Date of Passing Award – 4th September, 2017**

**No. L-43011/8/2011-IR(M), dated 26.06.2012**

**Between:**

1. The Managing Director,
SAIL, Rourkela Steel Plant,
Rourkela, Orissa.

2. The General Manager,
M/s. NSPCL, Rourkela Steel Plant,
Rourkela.

3. M/s. TATA Projects Ltd., Contractor,
C/o. Rourkela Steel Plant, Rourkela.

4. M/s. Shapoorji Paloonjee & Co. Ltd.,
Rourkela Steel Plant, Rourkela.

5. M/s. Thermax Limited, Contractor,
C/o. Rourkela Steel Plant, Rourkela.

6. M/s. Siemens Limited, Contractor,
C/o. Rourkela Steel Plant, Rourkela.

7. M/s. L & T Limited, Contractor,
C/o. Rourkela Steel Plant, Rourkela.

8. M/s. Simplex India Limited, Contractor,
C/o. Rourkela Steel Plant, Rourkela.

9. M/s. Mcnally Bharat Engg. Co. Ltd.,
Contractor, C/o. Rourkela Steel Plant,
Rourkela.

10. M/s. NBCC, Contractor,
C/o. Rourkela Steel Plant, Rourkela …1st Party-Managements

**(And)**

The General Secretary,
Rourkela Contractor Workers Union,
Shramik Bhawan, A/49, Sector-16,
Rourkela …2nd Party-Union.

**Appearances :**

Auth. Representative … For the 1st Party-Management No. 1 & 10.

None … For the 2nd Party-Union.

**ORDER**

Authorized representatives for the Management No. 1 and 10 are present whereas none appears on behalf of other Managements as well as the 2nd party-Union. The record reveals that after filing of the statement of claim all the Managements except Management No. 5, 8 and 10 have already filed their written statements. Since the Management No. 5 and 8 have not taken any steps they are set exparte. It is also seen from the record that the Union is not taking any steps after 30.3.2016 onwards. Since the reference is made at the instance of the 2nd party-Union their presence for just decision of the case is required. As they have not taken any steps it may be presumed that either the Union is not interested to pursue the dispute or the same might have been resolved amicably out of the court. In the above back-drops there is no alternative for this Tribunal than to return the reference. The reference is disposed of accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 903.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स पंचपतमाली बॉक्साइट माइन्स, नेशनल एल्यूमिनियम कम्पनी लिमिटेड (नालको) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भूवनेश्वर के पंचाट (संदर्भ संख्या 25/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-43011/3/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 903.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2015) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Panchpatmali Bauxite Mines, National Aluminium Co. Ltd. and their workman, which was received by the Central Government on 30.05.2018.

[No. L-43011/3/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 25/2015**

No. L-43011/3/2015-IR(M), dated 30.06.2015

**Date of Passing Order – 17th April, 2018**

**Between:**

The General Manager (Mines),
Panchpatmali Bauxite Mines,
National Aluminium Company Ltd.,
Damanjodi, Koraput, Orissa. …1st Party-Management

**(And)**

The Secretary,
NALCO Mines Employees Union,
D-9, Nalco Township, Koraput, Orissa. …2nd Party-Union.

**Appearances:**

Shri Saroj Kr. Patra, Authorized Rep. … For the 1st Party- Management.

None … For the 2nd Party-Union.

**ORDER**

Authorized representative of the Management is present. None appears on behalf of the 2nd party-Union on repeated calls. It is submitted by the authorized representative for the Management that the Union is not taking any steps for the last several adjournments and the case is unnecessary lingering. Perused the case record. It is seen that after filing of the Statement of Claim and Written Statement by the parties the 2nd party-Union is not taking any steps with effect from 28.2.2017. In the above back-drops it may be presumed that the 2nd party-Union is not interested to prosecute the matter. In absence of any evidence from the side of the Union there is no alternative than to return the reference without any adjudication. The reference is accordingly disposed of.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 904.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स लिंगराज लेंका एण्ड ब्रदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भूवनेश्वर के पंचाट (संदर्भ संख्या 27/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-30012/1/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 904.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2017) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Lignaraj Lenka & Brothers and their workman, which was received by the Central Government on 30.05.2018.

[No. L-30012/1/2017-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 27/2017**

No. L-30012/1/2017-IR(M), dated 25.04.2017

**Date of Passing Order – 9th November, 2017**

**Between:**

1. The Proprietor,
M/s. Lingaraj Lenka & Brothers,
At./Po. Baijanga,
Dist. Jagatsinghpur-754 106 …1st Party-Management

**(And)**

Mr. Manoj Kumar Gochhyat,
C/o. Kashinath Gochhayat, At. Bihipur,
Po. Sankeswar, Via. Tirtol,
Distt. Jagatsinghpur (Odisha). …2nd Party-Workman.

**Appearances:**

None. … For the 1st Party-Management.

None … For the 2nd Party-Workman.

**ORDER**

Case taken up. Parties are absent. The 2nd Party-Workman has not filed any statement of claim despite notice through regd. post. As such, it seems that the 2nd party-workman is not interested in prosecuting his case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 905.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स लिंगराज लेंका एण्ड ब्रदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भूवनेश्वर के पंचाट (संदर्भ संख्या 28/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-30012/3/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 905.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2017) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Lignaraj Lenka & Brothers and their workman, which was received by the Central Government on 30.05.2018.

[No. L-30012/3/2017-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 28/2017**

No. L-30012/3/2017-IR(M), dated 25.04.2017

**Date of Passing Order – 9th November, 2017**

**Between:**

1. The Proprietor,
M/s. Lingaraj Lenka & Brothers,
At./Po. Baijanga, dist. Jagatsinghpur,
Odisha – 745 106 …1st Party-Management

**(And)**

1. Mr. Lalit Narayan Raiguru,
S/o. Loknath Raiguru, Qtrs. No. JB/190,
At./Po. Paradit, Dist. Jagatsinghpur,
Odisha – 754 142.

2. Mr. Jrusikesh Swain,
At. Bambilo, Po. Taranjanga,
Via. Tirtol, Dist. Jagatsinghpur,
Odisha – 754 137.

3. Mr. Jyoti Ranjan Parija,
At./Po. Taranjanga, Via. Tirtol,
Dist. Jagatsinghpur, Odisha – 754 137.

4. Mr. Rakesh Balabant Ray,
At. Gotrabil, Po./Via. Padampur,
Distt. Kendrapara, Odisha – 754 142.

5. Mr. Pruthivraj Mohanty,
At./Po. Samanga, Via. Raghunathpur,
Dist. Jagatsinghpur, Odisha – 754 132 …2nd Party-Workmen

**Appearances:**

None … For the 1st Party-Management.

None … For the 2nd Party-Workmen.

**ORDER**

Case taken up. Parties are absent. The 2nd Party-Workmen have not filed any statement of claim despite notices through regd. post. As such, it seems that the 2nd party-workmen are not interested in prosecuting their case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 906.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मां सरला सप्लायर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भूवनेश्वर के पंचाट (संदर्भ संख्या 29/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-30012/4/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 906.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2017) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Maa Sarala Supplier and their workman, which was received by the Central Government on 30.05.2018.

[No. L-30012/4/2017-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 29/2017**

No. L-30012/4/2017-IR(M), dated 25.04.2017

**Date of Passing Order – 9th November, 2017**

**Between:**

1. The Proprietor,
M/s. Maa Sarala Supplier, At. Samajori,
Po. Madhurgandakhamar,
Via. Kujang, Dist. Jagatsinghpur, Odisha.

2. Mr. Suryamani Pradhan,
Qtr. No. NBBC/29, At. Madhuban,
Po. Paradip, Dist. Jagatsinghpur, Odisha …1st Party-Managements

**(And)**

Shri Gyana Ranjan Sahoo,
S/o. Ramesh Chandra Sahoo,
At. Dulupur, Po. Babujang, Via. Tyendrakura,
Distt. Cuttack, Odisha – 754 131 …2nd Party-Workman

**Appearances:**

None. … For the 1st Party-Managements.

None … For the 2nd Party-Workman.

**ORDER**

Case taken up. Parties are absent. The 2nd Party-Workman has not filed any statement of claim despite sending notice through regd. post. As such, it seems that the 2nd party-workman is not interested in prosecuting his case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 907.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स नालको लिमिटेड, स्मेल्टर प्लांट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भूवनेश्वर के पंचाट (संदर्भ संख्या 30/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-43011/4/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 907.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2017) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Nalco Ltd., Smelter Plant and their workman, which was received by the Central Government on 30.05.2018.

[No. L-43011/4/2016-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 30/2017**

No. L-43011/4/2016-IR(M), dated 25.04.2017

**Date of Passing Order – 14th November, 2017**

**Between :**

The General Manager, (HR&A),
M/s. Smelter Plant, Nalco Ltd.,
Po. Nalco Nagar, Dist. Angul,
Orissa - 759 145 …1st Party-Management

**(And)**

The General Secretary,
Nalco Employees Sangha,
Po. Nalco Nagar, Dist. Angul,
Orissa – 759 145 …2nd Party-Union.

**Appearances:**

None. … For the 1st Party-Management

None … For the 2nd Party-Union

**ORDER**

Case taken up. Parties are absent. The 2nd Party-Union has not filed any statement of claim despite notice through regd. post. As such, it seems that the 2nd party-Union is not interested in prosecuting its case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 908.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स नेशनल एल्यूमिनियम कम्पनी लिमिटेड (नालको) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 39/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-43011/1/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 908.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2017) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. National Aluminium Co. Ltd. (NALCO) and their workman, which was received by the Central Government on 30.05.2018.

[No. L-43011/1/2017-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 39/2017**

No. L-43011/1/2017-IR(M), dated 19.05.2017

**Date of Passing Order – 13th December, 2017**

**Between:**

The General Manager (S & P),
M/s. National Aluminium Co. Ltd. (NALCO),
At./Po. Nalco Nagar, Angul (Orissa – 759 145 …1st Party-Management

**(And)**

The General Secretary,
Nalco Employees Sangha,
Po. Nalco Nagar, Angul, Orissa – 759 145 …2nd Party-Union

**Appearances :**

None. … For the 1st Party-Management.

None … For the 2nd Party-Union

**ORDER**

Case taken up. Parties are absent. The 2nd Party-Union has not filed any statement of claim despite sending of notice through regd. post. As such, it seems that the 2nd party-Union is not interested in prosecuting its case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 909.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 16/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-26011/36/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 909.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2017) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Steel Authority of India Ltd. and their workman, which was received by the Central Government on 30.05.2018.

[No. L-26011/36/2016-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**BEFORE, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH**

**Case ID No.16/2017**

Workmen through General Secretary, Railway,
Loading and Unloading Union, Narwal, Jammu …Petitioner

**Versus**

1. The Chairman, M/s Steel Authority of India Ltd.,
   Corporate Office, ISPAT Bhawan, Lodi Road,
   New Delhi-110003.

2. The Manager, M/s Steel Authority of India Ltd.,
   Rail Head Commercial Complex, Panama Chowk,
   Jammu (J&K)-180006 …Respondent

**Appearances :**

For the Workman : None for the workman

For the Management : None for the management

**AWARD**

Passed on: 22/02/2018

Government of India, Ministry of Labour vide notification F.No.L-26011/36/2016-IR(M) Dated 13.07.2017, the Central Govt. has referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Steel Authority of India, New Delhi representing through its Chairman, for not accepting charter of demands (enclosed as 'Annexure A')is justified or not? If not, to what relief these workmen are entitled to and from which date?"

It is clear from the record that notice was sent to the parties when the reference was received by this Tribunal. However, workman has not put up their present despite issuing notice as such post were received back with the endorsement that "not known". This clear shows that the workmen were not interested in the adjudication of matter. Resultantly, no claim award passed against the workmen. It may also be clarified that passing of the no claim award would not bar the workman from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent (both soft as well as hard copy) to the Appropriate Government as required under Section 17 of the Act for publication. File after completion be consigned.

Chandigarh
22.02.2018

A. C. DOGRA, Presiding Officer-cum-Link Officer

नई दिल्ली, 31 मई, 2018

**का.आ. 910.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली इंटरनेनल एयरपोर्ट (प्राइवेट) लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 128/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-11011/1/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 31st May, 2018

**S.O. 910.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 128/2015) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Delhi International Airport (P) Ltd. and others and their workman, which was received by the Central Government on 30.05.2018.

[No. L-11011/1/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1 : ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075**

**ID No. 128/2015**

The General Secretary,
Hindustan Engineering & General Mazdoor Union,
A-193, Karampura,
New Delhi – 110 015 …Workman

**Vs.**

1. The Chairman,
   Delhi International Airport (P) Ltd.,
   New Udaan Bhawan, IGI Airport,
   New Delhi – 110 037

2. The Manager,
   M/s Apple Tree Building Maintenance Pvt. Ltd.
   Plot No.176, Sector 8,
   IMT Manesar, Gurgaon

3. The Manager,
   M/s Technoclean India Pvt. Ltd.,
   2nd Floor, Pragati house,
   47-48, Nehru Place,
   New Delhi …Management

**AWARD**

In the present case, a reference was received from the appropriate Government vide letter No.L-11011/1/2015-IR(M) dated 05.05.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, (in short, the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether termination of services of Shri Narender Kumar & 76 others (list enclosed) by the management of DIAL/M/s. Apple Tree Building Maintenance Pvt. Ltd. during pendency of an industrial dispute of general demand is just, fair and legal? If not, what relief the workmen concerned are entitled?

2. Parties were put to notice and claimants (77 in number) filed statement of claim averring therein that the claimants were working with Delhi International Airport (P) Ltd. and gave no chance of complaint to the management. As per the orders of the Hon'ble High Court of Delhi and Supreme Court in SLP No.(C) 377/22012, Trolly labour were not to be engaged through contractor and all the workmen who were operators were to be regularized. Subsequent to the order of the Hon'ble High Court, the workmen appealed for putting an end to the contract system and there was a tripartite talk with the Advisory Board and the Chairman of the Advisory Board was directed that though the contractors are changed, the workmen presently working are not to be terminated. However, this annoyed management of Delhi International Airport (P) Ltd. and without following the Advisory Board, engaged new workmen through M/s. Technoclean India Pvt. Ltd. The workman again filed a writ petition bearing No.16075/2013 and the workmen already working are to be re-employed as per order dated 29.11.2003 in writ petition No.7512 of 2013. In spite of the order of the Hon'ble High Court, the claimant were not taken in service. Thereafter, the claimants approached the Assistant Labour Commissioner and due to non-co-operative attitude of the management the conciliation proceedings in failure, resulting in the above reference. Finally, it has been prayed that the claimants may be reinstated in service with full back wages.

3. Claim was demurred by Delhi International Airport (P) Ltd. who have taken preliminary objection for deletion of their name from the array of parties as they are separate legal entity and is merely a lessee of the IGI Airport. On merits, the management of Delhi International Airport (P) Ltd. have denied the material averments contained in the statement of claim. It is further submitted that provisions of Section 7, 10 and 12 of the Contract Labour (Regulation & Abolition) Act, 1970 have been duly complied with. Delhi International Airport (P) Ltd. has entered into an agreement with M/s. Apple Tree Building Maintenance Pvt. Ltd. for house keeping activities and the claimants have been engaged by them. Hence, there is no relationship of master and servant between the management and the claimant.

4. Statement of defence was submitted by M/s. Apple Tree Building Maintenance Pvt. Ltd., who have also taken various preliminary objections, inter alia of the same being false and frivolous, not approaching the court with clean hands, claim being without any cause of action. On merits, M/s. Apple Tree Building Maintenance Pvt. Ltd. have denied the other material averments contained in the statement of claim as they were granted contract by Delhi International Airport (P) Ltd. for a period of three years and later on extended for three months. The claim has been filed with ulterior motive with a view to fetch money. The claimant had refused to work on any other site. Finally, it has been prayed that the claim statement may be dismissed as the same is false and frivolous.

5. In the meanwhile, it was stated by the authorized representatives of the respective parties that there are chances of settlement. Good sense prevailed and the dispute was settled in the Lok Adalat between the parties amicably. In view of these facts that the parties had settled their dispute amicably, there remains no occasion to proceed in the matter on merits.

6. Authorized representative for the claimants made a statement to the effect that the claimants have received their full and final payment and there remains nothing to be paid from the side of management of M/s. Apple Tree Building Maintenance Pvt. Ltd. The receipt of full and final settlement/no dues certificates in respect of the claimants has already been filed, which is marked as Ex.C-1(colly). Statement of Shri Kailash Kumar, authorized representative of the claimant and Ms. Poonam Dubey, Assistant Manager (HR), M/s. Apple Tree Building Maintenance Pvt. Ltd. have been separately recorded. The receipt of full and final settlement, Ex.C-I (colly), shall form integral part of the award. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

January 16, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 911.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, गोला बारुद कारखाना, खड़की, पुणे एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, पुणे के पंचाट (संदर्भ संख्या 482/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2018 को प्राप्त हुआ था।

[सं. एल-14012/14/2004-आईआर (डीयू)]
राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 911.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 482/2004) of the Labour Court, Pune now as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Ammunition Factory, Khadki, Pune and their workmen, which was received by the Central Government on 20.02.2018.

[No. L-14012/14/2004-IR (DU)]
RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE THE PRESIDING OFFICER, 4TH LABOUR COURT, AT PUNE**

( Presided over by Dhanashri R. Khamkar )

**Ref. (I.D.A.) No.482/2004.** **Exh.O-107**

The General Manager,
Ammunition Factory, Khadki,
Pune 411003 …First Party

**V/s.**

Mr. Javid Hamid Shaikh,
C/o. Mr. I. I. Khan,
186, Old Bazar, Khadki,
Pune – 411 003. …Second Party

**CLAIM** :-

Reinstatement with continuity of service and full back wages of Second Party.

Adv. Sandhya Deshpande : For First Party.

Adv. N. A. Kulkarni : For Second Party.

**AWARD**

( Delivered on this 24th day of January, 2018 )

1) This is the reference made by the Government of India, Ministry of Labour, New Delhi to adjudicate the dispute raised by the second party to the effect, *"Whether the services of the second party were illegally terminated by the first party w.e.f. 07/07/2001, if yes, whether the second party is entitled for the reliefs of his reinstatement with continuity of his service and his full back wages from first party,* under Section-10 of the Industrial Disputes Act".

2) **The brief facts of the second party's case are under :**

The second party has contended in his statement of claim below **Exh.8** that he was in service as 'Turner' with first party on a probation period w.e.f. 16/08/1999 to 07/07/2001 on agreed to get last salary @ Rs.6,000/- P.M. He has completed more than 240 days service with first party.

3) It is contended that on 13/06/2001, the first party had issued a suspension order to him under Sub-Rule 1 of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 and thereafter on 07/07/2001 he was terminated from service. He was appointed by an order dated 16/08/1999 for the probationary period of two years. So, his probationary period was to expire on 16/08/2001. Thus, prior to the expiry of the probationary period, his services were terminated relying upon Clause No.2 of the appointment order, was absolutely illegal. The first party has no right to terminate the services prior to the expiry of the probationary period as agreed by and between the parties.

4) It is further contended that since his services were terminated without holding any enquiry, without giving any opportunity of being heard, and without following the provisions of Section 25 (F) of the Industrial Disputes Act, 1947, his termination is illegal and requires to be quashed and *set-aside*. The second party, therefore, prayed for to direct the first party to reinstate him with continuity of his service with his full back wages together with all other consequential benefits against the first party.

5) The first party has resisted this statement of claim filed by the second party by filing its written statement at **Exh.15**. The first party has denied all adverse allegations levelled against it by the second party in its statement of claim. The first party raised its objection that the present reference is not maintainable and is bad in law.

6) It is submitted by the first party that the first party is the establishment of the Central Government. The activity carried on by the said establishment is the production of arms and ammunition required for Army, Air Force and Naval Wings of the Nation. Thus, the work carried out by first party establishment is exclusively related to safety and security of nation. The work carried out by the first party department is controlled and supervised and administrated by Central Government only. The funds for the same are provided by the Central Government and its audit is done by the Central Government only. The said work is unalienable to any private body, cannot be entrusted to any private body taking into account the object behind it. Thus, the functions carried out by the first party department are the sovereign functions. Therefore, the first party do not come under the head 'Industry' as defined in the Industrial Disputes Act, 1947 and therefore, the provisions of Industrial Disputes Act, 1947 are not applicable to the first party department. Therefore, this court has no jurisdiction to try and entertain the present reference.

7) It is further submitted that as the services of second party were governed and controlled by the Central Civil Services (C.C.S.) and Classification, Control and Appeal (C.C.A.) Rules. These rules being a special enactment exclusively created for the specific set of employee's i.e. Central Government Employee's, vide powers under Article 309 of Constitution of India. Thus, being a special enactment, the said Rules prevails over the general law i.e. Industrial Disputes Act, 1947, in case of Central Government Employee's. Therefore, the Central Administrative Tribunal, established under the Administrative Tribunals Act is a special forum for the redressal of grievances of second party. On these grounds the jurisdiction of this court is barred.

8) It is further submitted that the second party was appointed on a probation from 16/08/1999 however, his services were brought to an end vide order dated 07/06/2001 as per the provisions of Para 2 (c) of his appointment order dated 16/08/1999 as his performance during his probationary period was unsatisfactory. It is submitted that on 11/06/2001, the second party had stolen a pass book of one Mr. L. S. Tapkir from the table of Mr. S. S. Shinde, Chairman of Q.C.M.C. Section, who is a Member of Society, and to whom Mr. L. S. Tapkir had given the pass book earlier. The second party has made a forgery of signature of Mr. L. S. Tapkir and presented withdrawal from to A. F. C. C. S. Manager on two occasions and succeeded in drawing a total sum of Rs.25,000/- in two installments from the Savings Account of Mr. L. S. Tapkir. Since the second party has committed a forgery, the act was serious and therefore he was placed under suspension under the C. C. S. (C.C.A.) Rules. After investigation it was revealed that the character of second party due to impersonation and forgery had maligned and was not consistent with the standard of a Government Employee's, therefore, the termination order was issued. Thus, the said termination order of second party is apparently simple one which do not cast any stigma on second party. No enquiry before termination as alleged by second party was mandatory as the second party was working on probation. On all these grounds, the first party has requested to dismiss this reference filed by the second party.

9) On rival pleadings of both the parties to this case, my learned predecessor have framed the following issues at **Exh.22** and I recorded my findings thereon for the reasons discussed below :

| | **ISSUES** | **FINDINGS** |
|---|---|---|
| 1) | Whether the first party is an 'Industry' within the meaning of Industrial Disputes Act ? | **.. Negative.** |
| 2) | Whether this Court has jurisdiction to try and decide this reference ? | **.. Negative.** |
| 3) | Whether the services of second party are governed and controlled by the Central Rules as alleged by first party ? | **.. Affirmative.** |
| 4) | Whether the jurisdiction of this court is barred under the Administrative Tribunals Act ? | **.. Affirmative.** |
| 5) | Whether the termination of services of the second party is illegal ? | **.. Does not survive.** |

| | | |
|---|---|---|
| 6) | Whether second party is entitled to the reliefs claimed ? | **.. Does not survive.** |
| 7) | What order ? | **.. As per final award.** |

**REASONS**

10) Both second party and first party have lead oral as well as documentary evidence in support of their respective contentions.

The second party has examined himself UW1 Javid Hamid Shaikh at **Exh.20** and produced documents at list **Exh.21** viz. payslips of second party (total 18) at **Exh.26**, appointment order issued to second party dated 16/08/1999 at **Exh.23**, suspension order issued to second party dated 13/06/2000 at **Exh.24** and termination order issued to second party by first party dated 07/07/2001 at **Exh.25** in support of his contentions.

The first party examined CW1 Shri. Shankarnath Naskar at **Exh.55**, CW2 Shri. Shivaji Shankarrao Shinde at **Exh.76** and Shri. Balkrushna Namdeo Bharekar at **Exh.81** and produced various documents at list **Exh.77** viz. deposit slip of saving A/c. No.6363 of L. S. Tapkir with Ammunition Factory Co-operative Credit Society Limited, Khadki dated 08/06/2001 at **Exh.78**, withdrawal slip of saving A/c. No.6363 of L. S. Tapkir, with Ammunition Factory Co-operative Credit Society dated 06/06/2001 of Rs.10,000/- (Voucher No.2040) at **Exh.83** and withdrawal slip of saving A/c. No.6363 of L. S. Tapkir, with Ammunition Factory Co-operative Credit Society dated 07/06/2001 of Rs.15,000/- (Voucher No.2047) at **Exh.84**, documents at list **Exh.35** viz. report by office In-charge C-3 Section of A.F.K. Dated 08/06/2001 along with endorsement No.1 to 4 namely exhibited at **Exh.57 1-A**, **Exh.58 1-B**, **Exh.59 1-C** and **Exh.60 1-D** and investigation report by Sr. Security Officer dated 11/06/2001 alongwith endorsement No.'a' to 'e' containing 08 sheets at **Exh.61** they are as follows : application of withdrawal of money by forged sign at **Exh.62**, cheques at Article 'A', 'B' and 'C', statements of S. S. Shinde at **Exh.63**, statement of Lakshman Sonu Tapkir at **Exh.64**, statement of second party at **Exh.65**, muster roll at **Exh.19** and pay slips of second party at **Exh.26** collectively in support of its contentions.

Heard argument advanced by counsels for both the parties to this case.

The oral as well as documentary evidence lead by both the parties to this case are discussed hereinafter issue wise :

**AS TO ISSUE NO.1 :-**

11) It was brought in the evidence of CW1 Shri. Shankarnath Naskar, at **Exh.55** that the first party is the establishment of the Central Government. The activity carried on by the said establishment is the production of arms and ammunition required for Army, Air Force and Naval Wings of the Nation. Thus, the work carried out by first party establishment is exclusively related to safety and security of nation. These works are controlled and supervised and administrated by Central Government only. The funds for the same are provided by the Central Government and its audit is done by the Central Government only. The said work is unalienable to any private body, cannot be entrusted to any private body taking into account the object behind it. Thus, the functions carried out by the first party department are the sovereign functions. Therefore, the first party do not come under the head 'Industry' as defined in the Industrial Disputes Act, 1947.

12) The aforesaid contentions are confirmed in his cross-examination in which the said witness has stated that around 5500 employee's are engaged in first party for manufacturing Arms and ammunition for Navy, Air Force and Army and no private person or company manufactures Arms and ammunition.

13) The learned counsel for the first party Smt. Sandhya Deshpande has argued that first party factory do not come within the purview of 'Industry' defined under Section 2 (j) of the Industrial Disputes Act, 1947.

14) Relying on the **Clause (6)** of the definition of 'Industry' amended in 1982 which specifically excludes

*'any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space'.*

from the category of 'industry', the first party submitted that the first party factory is manufacturing the arms and ammunition for Navy, Air Force and Army which are one of the sovereign functions. These activities cannot be entrusted to any private body considering the object behind it. These activities are exclusively carried out by Government only. As the first party has carrying out the sovereign functions, it do not come under the head of 'Industry' as defined in Industrial Disputes Act, 1947.

15) In support of its contentions, the first party has relied on the authority of :

*Chief Conservator of Forersts and V/s. Jagannath Maruti Kondhare, Etc., decided on 06 December, 1995,* wherein the Hon'ble Court relied on the observation laid down in *Bangalore Water Supply* in which the Hon'ble Supreme Court has held that :

> *"…. the Forest Department cannot be said to be an "industry" as per the ratio in Bangalore Water Supply case, because the function discharged by the department, more particularly the one relatable to the scheme in question, named Pachgaon Parwati Scheme undertaken in Pune district, is sovereign in nature....".*

The ratio laid down in above cited authorities are squarely applicable to the present facts and circumstances of the case. Because in present case the functions carried out by first party are exclusively related to safety and security of nation and are sovereign one which cannot be discharged by any private person. The same fact is admitted by second party during his cross-examination at **Exh.20**.

16) On the contrary, the learned counsel for second party has pointed that as the amended definition of 'Industry', 1982 is still not implemented, its application should not be considered in this case. To support this contention, no any concrete evidence was produced by second party on record.

Further, not a single piece of evidence was brought on the part of second party to prove that the functions of first party i.e. production of arms and ammunition for Navy, Air Force and Army are carried out by another private person and are not sovereign one. While in his cross-examination the second party himself admitted that he was working as 'Turner' in first party factory, in which production of arms and ammunition was the main function and this category comes exclusively under the control of Central Government.

17) Considering the aforesaid discussion and relied on the ratio of cited authority, it is observed that as the first party factory is carrying sovereign functions, it does not comes under the category of 'Industry' under the Industrial Disputes Act, 1947. Hence, I answer this issue No.1 in **'Negative'**.

**AS TO ISSUE NO.3 :-**

18) The learned counsel for the first party Smt. Sandhya Deshpande has argued that the first party department is of Central Government, the appointment, service terms and conditions of its employees are governed by Central Civil Services (C.C.S.) and Classification, Control and Appeal (C.C.A.) Rules and various Government resolutions issued from time to time in the name of the President of India, which are binding on the employee's working with the said institution.

19) In support of its contention, the first party has relied on documents filed at list **Exh.21** namely appointment letter, suspension letter and termination letter of second party at **Exh.23**, **Exh.24** and **Exh.25**, the muster roll of second party at **Exh.19** and the pay slips of second party at **Exh.26** collectively.

Going through these documents it is observed that the second party was appointed as 'Turner' in the first party factory. His appointment, salary, attendance were regulated by the Central Government Rules. Further, he was suspended and terminated by the order of Central Government.

During cross-examination the second party has admitted these facts by stating that he was appointed, suspended and terminated by Central Government. The said suspension or termination was not challenged by him anywhere. Thus, the cross-examination of second party itself confirms this position that the services of second party were governed and controlled by Central Government Rules.

20) In support of its contentions, the first party has relied on the authority of *Sub-Divisional Inspector of Post, Vaikam and Others V/s. Theyyam Joseph and Others, reported in (1996) 8 Supreme Court Cases 489*, wherein Hon'ble Supreme Court has observed that :

> *"It would thus be seen that the method of recruitment, the conditions of service, the scale of pay and the conduct rules regulating the service conditions of ED Agents are governed by the statutory regulation. It is now settled law of this Court that these employees are civil servants regulated by these conduct rules. Therefore, by necessary implication, they do not belong to the category of workmen attracting the provisions of the Act".*

The ratio laid down in above cited authorities are squarely applicable to the present facts and circumstances of the case. Because from the aforesaid discussion it is cleared that the services of second party were governed and controlled by Central Government Rules as he was appointed, salaried, suspended and terminated by Central Government Rules.

21) Considering the aforesaid discussion and the ratio laid down in aforesaid mentioned authority I come to the conclusion that the services of second party were governed and controlled by the Central Government Rules. Hence, I answer this issue No.3 in **'Affirmative'**.

**AS TO ISSUES NO. 2 & 4 :-**

22) The learned counsel for the first party Smt. Sandhya Deshpande has argued that as the first party department is of Central Government, the services of second party were governed and controlled by Central Civil Services Rules and Classification, Control and Appeal Rules, therefore this court has no jurisdiction to try and entertain this matter but the Central Administrative Tribunal, established under the special enactment i.e. the Administrative Tribunal Act is a special forum for the redressal of grievances of second party. Therefore, the jurisdiction of this court is barred under the Central Administrative Tribunal.

23) Relying on Section 39 of the Industrial Disputes Act, 1947, the learned counsel for first party Smt. Sandhya Deshpande has argued that the employee's to whom Central Civil Services Rules applies are excluded from the scope of the Industrial Disputes Act, 1947 and the notification is specifically governed in this respect.

24) In support of its contention, the first party has relied on the authority of *Director of Postal Services V/s. K. R. B. Kaimal and Another, reported in 1984 (1) SLR 501*, wherein Hon'ble Kerala High Court has observed that :

> *"Industrial Disputes Act therefore is a general law relating to industrial disputes. Rules relating to the temporary employee's in the P and T Department are special provisions applicable to a particular class. These rules take note of the special feature of these categories of Government servants and take care of their tenure and termination. Entry 61 in List I relates to Industrial Disputes concerning union employee's. There was no such entry in the Government of India Act. It seems thus to be clear that the Union is now armed with a specific entry in List I to embark on a fresh legislation relating to industrial disputes concerning union employees, a special subject, incidentally implying that the field under entry 22 List III is of general application. In fact both the Centre and the State have enacted several laws where specific provisions for industrial disputes in particular industries have been made, notwithstanding Act 14 of 1947. the special rules relating t the temporary Government servants thus exclude the general provision in the Industrial Disputes Act".*

The ratio laid down in above cited authorities are squarely applicable to the present facts and circumstances of the case. Because in view of affirmative answer of issue No.3 it is cleared that as the second party was Central Government servant, the Central Civil Services Rules are applicable to him which are the special rules enacted for exclusively for Central Government Employee's. Therefore, the said rules prevails over the general law i.e. the Industrial Disputes Act, 1947.

25) In the light of negative answer on issue No.1 and affirmative answers on issue No.3, it is observed that as the first party is not an 'Industry' as per Section 2 (j) of the Industrial Disputes Act, 1947 as it carried out the sovereign functions and the services of the second party are governed by Central Civil Services Rules. Considering these aspects it is crystal clear that this court has no jurisdiction to try and entertain this matter. Therefore, I inclined to answer this issue No.2 in **'Negative'** and issue No.4 in **'Affirmative'**.

**AS TO ISSUES NO. 5 TO 7 :-**

26) Admittedly, I have hold under issue No.2 that this court has no jurisdiction to try and entertain this Reference. Therefore, the issues No.5 and 6 regarding his illegal termination of second party and entitlement to the reliefs claimed 'does not survive' for my determination. Hence, I answer these issues No.5 and 6 as **'does not survive'**. In the result, in answer to issue No.7, I proceed to pass the following order.

**ORDER**

1) This reference is hereby dismissed.

2) No order as to costs.

**Pune.**

Date :- 24/01/2018.

DHANASHRI R. KHAMKAR, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 912.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, निदेशक, जन शिक्षा संस्थान, अभिनव बिदानासी, कटक और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर पंचाट (संदर्भ संख्या 50/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.05.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 912.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 50/2017) of the Central Government Industrial Tribunal cum Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the Direcror, Jan Sikshan Sansthan, Abhinav Bidanasi, Cuttack & others and their workmen, which was received by the Central Government on 02.05.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR**

**Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 50/2017**

Filed under section 2-A(2) of the I.D. Act

**Date of Passing Order – 3rd April, 2018**

**Between:-**

1. The Director,
   Jan Sikshan Sansthan,
   Plot No. 8-4-1/521(P), CDA, Sector-8,
   Po. Abhinav Bidanasi, Dist. Cuttack – 753 014.

2. The Secretary, Jan Sikshan Sansthan,
   Plot No. 8-4-1/521(P), CDA, Sector-8,
   Po. Abhinav Bidanasi, Dist. Cuttack – 753 014 …1st Party-Managements.

**(And)**

Mir Shaukat Ali,
S/o. Late Mir. Azam Ali,
At. Tulasipur, (Gorakabar),
Ps. Bidanasi, Dist. Cuttack. … 2nd Party-Petitioner

**Appearances:**

| | | |
|---|---|---|
| Namita Mohapatra, Director | … | For the 1st Party-Managements. |
| Mir Shaukat Ali. | … | For the 2nd party-Union. |

**ORDER**

Parties are present. Written statement is filed on behalf of the Management. Copy of the same is served on the applicant-workman. The representative of the Management submits that the dispute is barred by limitation in view of the alleged dismissal of the workman late Mir Azam Ali father of the applicant being related to the year 1994. Perused the statement of claim filed by the applicant who is stated to be the legal heir of the workman Late Mir Azam Ali whose services alleged to have been terminated in the year 1994. As per the provisions of Section 2-A(2) any dispute relating to dismissal, termination, retrenchment, removal of an individual workman can be raised directly before the Tribunal after expiry of 45 days from the date he has made the application to the conciliation officer of the appropriate Government for conciliation of the dispute on such dismissal or termination and such application shall be made before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. Admittedly, the dismissal of the disputant workman was date back to the year 1994 and more than 23 years have already been elapsed and as such, the application is not maintainable under the provisions of Section 2-A(2) of the Industrial Disputes Act. Hence the application of the applicant is not maintainable and as such it is rejected.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 913.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, बीएसएनएल, चुरु (राजस्थान) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, बीकानेर के पंचाट (संदर्भ संख्या 01/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.05.2018 को प्राप्त हुआ था।

[सं. एल-40012/124/2005-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 913.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 01/2006) of the Industrial Tribunal-cum-Labour Court, Bikaner as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Churu (Rajasthan) and their workmen, which was received by the Central Government on 22.05.2018.

[No. L-40012/124/2005-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**अनुबंध**

श्रम न्यायालय, बीकानेर

पीठासीन अधिकारी : श्रीमती अल्का शर्मा, R.J.S.(DJC)

केन्द्रीय औद्योगिक विवाद प्रसंग संख्या 01/2006(13/2014)

भँवर लाल पुत्र श्री पूर्णमल जाति प्रजापत मार्फत BMS B-72 Sector,1 Sainik Basti Churu Distt. (Raj.)

—प्रार्थी/श्रमिक

**विरूद्ध**

दी जनरल मैनेजर भारत संचार निगम लि0 जिला चुरू (राज.) ।

—अप्रार्थी/नियोजक

**उपस्थित :—**

1. श्रमिक प्रतिनिधि अनुपस्थित ।

**आदेश**

दिनांक : 22 अप्रेल, 2018

1. श्रम विभाग, केन्द्रीय सरकार ने औद्योगिक विवाद अधिनियम,1947 (जिसे आगे चलकर केवल ''अधिनियम'' कहा जावेगा) की धारा 10 की उपधारा (1) व 2।)के खण्ड (डी) के अधीन जारी अधिसूचना क्रमांक L-40012/124/2005 दिनांक 14 जून, 2006 के द्वारा इस न्यायालय को निम्न विवाद अधिनिर्णय हेतु भेजा था :—

"Whether the action of management of BSNL,Churu in terminating the services of Shri Bhanwar Lal S/o Pooranmal Prajaput from 14.12-2004 is legal and justified ? If not, what relief the claimant entitled to and from which date?"

2. प्रसंग प्राप्त होने पर प्रकरण दर्ज रजिस्टर किया गया ।

3. दिनांक 11.07.2006 से लगातार यह प्रकरण स्टेटमेंट ऑफ क्लेम हेतु लम्बित रहा है । दिनांक 28.02.2018 को श्रमिक प्रतिनिधि श्री हजारी सिंह ने क्लेम नोट प्रेस होना जाहिर किया है, तथा दिनांक 16.03.2018 को यह प्रकरण लोक अदालत में रखने का निवेदन किया है । श्रमिक प्रतिनिधि के इस निवेदन पर यह प्रकरण लोक अदालत में रखा गया । आज श्रमिक प्रतिनिधि अनुपस्थित । ऐसा प्रतीत होता है कि लोक अदालत की भावना से श्रमिक पक्ष इस प्रकरण में कोई कार्यवाही नहीं चाहता है व राज्य सरकार द्वारा प्रेषित इस विवाद प्रसंग में ''कोई विवाद नहीं'' का पंचाट पारित करने की प्रार्थना की गई है।

4. अतः लोक अदालत की भावना से पक्षकारों के मध्य उत्पन्न प्रार्थी श्रमिक की सेवामुक्ति से सम्बन्धित इस लंबित प्रसंग में कोई विवाद नहीं का यह पंचाट पारित किया जाता है जो "अधिनियम" की धारा 17(1) के अन्तर्गत अधिनिर्णय प्रकाशनार्थ केन्द्रीय सरकार को भेजा जावे।

5. अधिनिर्णय दिनांक 22.04.2018 को विवृत न्यायालय में मेरे द्वारा लिखाया जाकर सुनाया गया तथा हस्ताक्षरित किया गया।

श्रीमती अल्का शर्मा, न्यायाधीश

नई दिल्ली, 1 जून, 2018

**का.आ. 914.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, दूरसंचार जिला प्रबंधक, बीएसएनएल, बहराइच और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 120/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/83/2004-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 914.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 120/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the employers in relation to the Telecom District Manager, BSNL, Bahraich & other and their workmen, which was received by the Central Government on 29.05.2018.

[No. L-40012/83/2004-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW**

**PRESENT**

RAKESH KUMAR
PRESIDING OFFICER

**I.D. No. 120/2004**

**Ref. No. L-40012/83/2004-IR(DU)** dated 29.10.2004

**BETWEEN**

Sri. Avneendra Tewari S/o Sri V.P.Tewari
R/o Mohalla Satti Kunwan,Civil Lines
Bahraich

**AND**

1. The Telecom District Manager
Telecom Deptt. BSNL
Bahraich

2. The Chief General Manager,Telecommunication
East, Lucknow/The Principal General Manager
Pee Kay Bhawan, Lucknow

**AWARD**

1. By order No. L-40012/83/2004-IR(DU) dated 29.10.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Avneendra Tewari S/o Sri V.B. Tewari and the Chief General Manager,Telecommunication/ Principal General Manager/Telecom District Manager, Lucknow/Bahraich for adjudication.

2. The reference under adjudication is:

**"WHETHER THE ACTION OF THE MANAGEMENT OF BSNL, BAHRAICH IN TERMINATING THE SERVICES OF SH. AVNEENDRA TEWARI S/O SRI V.B.TEWARI, DAILY WAGER W.E.F. 30.09.2001 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?"**

3. As per the claim statement A1-2 the workman has stated in brief while being unemployed and in search of job, the petitioner contacted opposite party no.1 and the applicant was offered the job of Generator Operator in the Telephone Exchange, Mihirpurwa, Bahraich on daily wages, since he has obtained certificate from Industrial Training Insititute, Bahraich in Electrical Trade. It has been asserted that the petitioner joined his duties on 01.09.2000 and has worked continuously till 30.09.2001 without break with due satisfaction of his superiors, there was no complaint against him. Monthly payment details has been given in para 4 of the claim statement. It has further been alleged that the services of the petitioner were abruptly terminated on 30.09.2001 by opposite party no.1 through an oral order and without any notice, chargesheet, compensation etc, provisions of Section 25F of the I.D. Act. were violated by the management.

4. The petitioner has emphasized that opposite party no.1 informed that his services were terminated with the directions of the opposite party No.2 & 3 although opposite party no.1 sent information to opposite party no.2 vide letter dated 05.10.2001 that the application workman had worked continuously for more than 240 days in a calander year. No prior notice and compensation was paid to him, several other persons junior to him were retained by the management. Provisions of Section 25H and 25G of the I.D. Act have been allegedly violated by the management. With the aforesaid pleadings request has been made for reinstatement of the workman alongwith continuity in service and full back wages etc.

5. Several documents have been filed as per list W-5 by the workman.

6. The management has filed written statement A2-13, alongwith separate application for condonation of delay. The opposite party while denying the allegations leveled in the claim statement has submitted that opposite party no.1 had no authority or power to engage any person in any capacity nor casual/temporary or daily rated/contract or short term basis. The management has got its Service Rules and Recruitment Rules, appointments are made strictly in accordance with these Rules. It has been stressed in the written statement that the applicant was never engaged in any capacity therefore the question of his alleged termination does not arise. The so called list of documents filed alongwith claim statement have been alleged by the opposite party as false and fictitious. No provision of I.D. Act has ever been violated by the management. Request has been made to reject the claim statement and to adjudicate the matter in favour of the respondent/opposite party.

7. The workman while strongly denying the counter allegation leveled in the written statement, has filed rejoinder A1-16 reiterating the pleas taken earlier in the claim statement. The names of other persons allegedly regularized by the management have been given in the rejoinder. Another list of documents C-17 enclosed by bunch documents has been filed by the workman. The management has filed certain documents as per list C-31.

8. The workman has filed his affidavit A1-32, as evidence and has been thoroughly cross examined on behalf of the management. Further the workman has filed documents as per list C-38/2 and C-39.

9. The management has filed affidavit of Sri Ram Charan, Divisional Engineer (HQ) as A2-36. He has been cross examined on behalf of the workman. Certain documents have been annexed alonwith his affidavit.

10. As per list M-54 and M-56 management has again filed photo copies of some documents, and document as per M-55.

11. Further an affidavit was filed as W-57. He has been cross examined on behalf of the management. An order passed by the CAT in O.A. 292/04 has been filed by the workman. Sri Dukhanti Prasad has been adduced by the workman as evidence. He has been cross- examined on behalf of the management but cross examination could not be concluded.

12. During the proceedings of the case, none has appeared in the court on behalf of the management to advance the arguments although several notices through registered post were sent to the management.

13. Arguments of Learned AR of the workman have been heard at length. Record has been scanned thoroughly.

14. Learned AR for the workman has asserted that the petitioner was employed as Generator Operator in the Telephone Exchange, as he had obtained a valid certificate from ITI, Bahraich in Electrical Trade. It has been emphasized that he has been working continuously from 1.09.2000 to 30.09.2001 but suddenly his services were terminated by Opposite Party No.1 without assigning any reason and giving any notice, charge sheet, compensation etc. The management while strongly refuting the facts of the claim statement, submits that opposite party no.1 did not have any authority or power to engage any person in any capacity, neither on casual basis nor on daily rated/contract, short term basis. All appointments are made in accordance with the departmental Rules and Recruitment Rules.

15. The workman Sri Avneendra Tewari in his affidavit W-57 has specifically stated the period for which he had worked in the department, and he has also mentioned that letter for regularization of casual labours was sent by SDE to the TDM. Copy of an order dated 09.12.2009, passed by the CAT, Lucknow in OA No. 292/04 has also been filed by the workman.

16. On behalf of the management Sri Ram Charan, Divisional Engineer HQ filed an affidavit A-36. Regarding sanction of staff in various Telephone Exchange and availability of the staff in the said 13 Telephone Exchange, questions have been asked from him on behalf of the workman. The sum dis-allowed by the Accounts Section, has been put in the cross examination with Sri Ram Charan. So called irregular activities conducted by Sri Dukhanti Prasad, the then SDE have been mentioned by the management witness Sri Ram Prasad but have not been duly corroborated by any authentic evidence. Moreover the then SDE Sri D.Prasad has been adduced in evidence by the workman, as W-64. Sri D.Prasad has stated on oath that the then Divisional Engineer Sri U.N. Agarwal has asked to employ Sri Aveenendra Tewari and thereafter the workman has worked w.e.f. 01.09.2000 to 30.09.2001 and payment has been made through voucher ACG-17. The relevant documents no.54 etc. have been admitted by the witness. The duties performed by the workman have been mentioned in the statement on page no.4. Sri D.Prasad has asserted that a letter was sent to TDM by him for the confirmation of the workman. On page no.6 the witness Sri D.Prasad has replied to a question regarding regularization, and has elaborated that 16 employees were regularized. On page no.7 in the cross examination Sri D.Prasad has stated that the amount of Rs.18698/- was allowed while the remaining Rs.15302 was dis-allowed. The proceedings regarding recovery from him have been challenged before the CAT, Lucknow and the same are pending there. He has also submitted that there was no departmental enquiry, neither any charge sheet was submitted.

17. Proxmity of Sri D.Prasad with the workman or any relationship/affinity etc. has not been brought on record by the management. In such circumstances the evidence on oath by Sri D.Prasad can not be disbelieved or brushed aside. The duties performed by the workman were purely official in nature, he was not a personal servant of any SDE/DET/DTM etc. All the details regarding payment made to the workman have been mentioned in para 4 of the claim statement and further in his affidavit, which clearly reflects that he has worked for more than 240 days in a calander year.

18. It may be quite pertinent to mention here that since 18.03.2014, none has been appearing in the court on behalf of the management. Several notices have been sent to the management through registered post yet none turned up before this Court. However on 18.02.2015, AR for OP appeared in the court, and he was informed the next date of hearing for argument. Again the management refrained itself from further proceeding with the case. Again in the interest of justice, notice through registered post was issued. It has also been pointed out on behalf of the workman that several other casual labourers have been regularized by the management but his services were illegally terminated.

19. After having heard the intellect arguments advanced on behalf of the workman, on perusal of the record available before the court, it is inferred that the aforesaid termination order dated 30.09.2001 can not be treated as legal or justified. The petitioner workman Sri Aveneendra Tewari is genuinely entitled for his reinstatement and to get 50% of the back wages. He is also entitled for his regularization, taking into account the fact that similar other casual labours have earlier been regularized by the management. The management is directed to reinstate the workman and to ensure the payment of dues to him, within 10 weeks from the date of notification of the award, failing which the petitioner shall also be entitled to get interest @ 6% per annum from the management.

20. Award as above.

Lucknow
30.10.2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 915.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, चीफ हॉर्टिकलचरिस्ट, पुरातत्व सर्वेक्षण भारत, आगरा एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 33/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/160/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 915.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 33/2014) of the Central Government Industrial Tribunal cum Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief Horticulturist, Archeological Survey of India, Agra and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-42012/160/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER,**
**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL**
**CUM LABOR COURT, KANPUR**

**Industrial Dispute No. 33 of 2014**

**Between**

Sri Jai Pal,
Son of Sri Than Singh,
C/o Sri Krishna Murari Sharma,
8/84, Bhogpura Shahganj,
Agra-282010.

**And**

The Chief Horticulturist
Archeological Survey of India,
Garden Branch, East Gate Tajmahal,
Agra-282001.

1. Central Government, Mol, New Delhi, vide notification no. L-42012/160/2013-IR(DU) dated 24.02.2014, has referred the following dispute for adjudication to this tribunal. Whether the action of the Chief Horticulturist Archeological Survey of India, Agra, in terminating the services of Sri Jaipal son of Sri Than Sisngh workman with effect from 01.04.2005 is just and fair? If not to what relief the workman concerned is entitled to?

2. In short the case of the worker is that he worked under the management at the post of Mali as muster roll employee and deployed to work at different monuments lying under Agra Circle and the details of which are that he worked at Mehtab Bagh during the period 01.06.2001 to 31.12.2001, Tajmahal during the period 01.01.2002 to 31.01.2002, Mehab Bagh during the period 01.02.02 to 31.08.08, Ram Bagh during the period 01.09.2003 to 31.10.03 and lastly at Mehtab Bagh during the period 01.11.03 to 31.03.05, an in this way he had worked for more than 240 days of continuous service under the management and in this way has obtained a right to be absorbed in the regular and permanent employment of the management. The worker when demanded his regularization in the service of the management, the management being annoyed from his demand had terminated his services with effect from 01.04.05, without any information, without any notice, notice pay and retrenchment compensation which is in violation of the provisions of Industrial Disputes Act, 1947. It is further alleged that there is no shortage of work under the management still after terminating the service of the worker management deployed several fresh hands in their employment to perform the same work that was performed by the worker. Lastly it is alleged that till date he is unemployed and despite his best efforts he could not get success in getting alternate employment.

3. In this way the worker has prayed that he be reinstated in the service of the management with full back wages and continuity of service.

4. Management in reply has filed a detailed written statement alleging therein various rulings of Hon'ble Apex Court and different Hon'ble High Courts which are not required to be mentioned at this point of time. However, on merit management pleads that the worker Jaipal was engaged as a daily wager on casual basis and he did not hold any permanent and regular post in the department. The worker had not mentioned the details of new persons alleged to have been engaged by the management. It is stated by the management that engagement of daily wager comes to an end automatically on completion of work and they do not have any right or lien on the post. It is also alleged that there is specific rules and procedure for providing employment and the worker had never been subjected for any such rules of procedure inasmuch as worker had never been issued any appointment letter not the management had ever terminated the service of the worker. It is wrong to allege that the worker had completed more than 240 days in any calendar months. It is also pleaded that the worker intends to seek back door entry in the employment of the management. Lastly it has been alleged that the worker is gainfully employed elsewhere hence neither he is entitled for his reinstatement nor any back wages from the management, therefore, the claim of the worker is liable to be rejected.

5. Rejoinder has also been filed by the worker but nothing new has been pleaded therein except reiterating the facts pleaded in the claim petition.

6. Along with rejoinder the worker has fled photocopy of Civil Misc. Contempt Petition no. 5376 of 2011.

7. Management has not filed any documentary evidence in the case.

8. Whereas the worker has examined himself as w.w.1, management has examined Sri Anil Sharma, as M.W.1

9. Management witness in his evidence has denied the working of the worker and that the worker had never been issued any appointment letter for the post of Mali and has also denied the working of the worker against any regular or permanent post. Witness has further stated that engagements of daily paid casual laborers are made from open market for shorter period to complete the work purely of casual nature. It is denied by the witness that the worker had ever completed 240 days of continuous work.

10. In his cross examination the witness has admitted the fact that whenever there is requirement of casual workers they were used to be engaged from open market. Such workers were paid weekly on the basis of their number of working days. The daily worker those are engaged are not given any order in writing and such workers used to work of their own choice at different monuments.

11. In evidence the worker has reiterated the contents of the claim petition. In his cross examination the witness has admitted that no advertisement was ever published for the post of Mali and he was never issued any appointment letter from the management. Witness has denied the suggestion that he was engaged for seasonal work. Witness has categorically admitted that he had not filed any documents to show that he had worked continuously for 240 days.

12. From the oral evidence of the worker it is established that he had never worked continuously for 240 days with the management. Burden lies on the worker to prove that he worked continuously for more than 240 days of continuous work. Even the worker has never tried to summon the relevant records from the management like payment register, attendance register etc., to prove his continuous working with the management or to prove that new faces were engaged after termination of his service.

13. In view of above discussions of facts and circumstances of the case as well as evidence lead by the parties, it is abundantly clear that the worker has miserably failed to prove his case of working of 240 days continuously with the management or to prove that new hands were engaged by the management after termination of his services.

14. Consequently it is held that the worker is not entitled to any relief pursuant to the present reference order.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 916.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, ब्रिटिश काउंसिल ऑफ इंडिया, कानपुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 72/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/87/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 916.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 72/2013) of the Central Government Industrial Tribunal cum Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, British Council of India, Kanpur and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-42012/87/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE SRI SHUBHENDRA KUMAR, HJS,**
**PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL**
**TRIBUNAL CUM LABOR COURT, KANPUR**

**Industrial Dispute No.72 of 2013**

**Between**

Shri Ram Kumar, S/o Ram Sewak,
C/o Shri Pradeep Kumar Saxena,
Cotton & Woolen Textile Workers Union,
99, Chunnignaj,
Kanpur (U.P)

**And**

The General Manager,
British India Corporation Ltd.,
Cawnpore Woolen Mills Brach
14/66, Civil Lines,
Kanpur(U.P)-208001

**AWARD**

1. Central Government, Mol, vide notification no. L-42012/87/2012-IR(DU) dated 27/05/2013, has referred the following dispute for adjudication to this tribunal.

2. "Whether the action of the management of British India Corporation Ltd. Cawnpore Woolen Mills Brach, Kanpur, in terminating the services of Shri Ram Kumar S/o Shri Ram Sewak w.e.f. 31.3.2011 is legal and justified? What relief the workman is entitled to?"

3. Case of the worker in short is that he was appointed by the opposite party on 07.05.91 as a permanent employee and at the time of his appointment he disclosed his date of birth as 3rd Feb. 1953 and has also submitted his birth certificate at the time of appointment. It is also alleged by the worker that it came to the his notice vide letter issued by the management on 09.12.09, that the management has recorded his date of birth as 01.04.51 in the records which is not correct in the absence of established proof. He made repeated requests before the authorities of the management to make correction in his date of birth recorded in the records maintained by the management but no positive action was taken on his request. The management has recorded wrong date of birth in the records on arbitrary and extraneous considerations, therefore, the worker should not be allowed to suffer for the mistakes committed by the authorities of the management and he was retired from service on the basis of illegal date of birth recorded in the records of the management which is highly illegal

and non-est in the eye of law. Lastly it is prayed that the retirement of the worker with effect from 31.03.11 is wholly illegal and invalid which is liable to be declared as illegal and the worker is entitled for the benefits available to him on the basis of correct date of birth and he is further entitled for arrears of wages.

4. Management has filed the written statement in which the entire claim of the worker has been denied. It is stated that the concerned workman had entered his date of birth as 03.02.53 at the time of engagement and had submitted any documentary proof of date of birth of Kanpur Nagar Maha-Palika in the record of employer. As a matter of fact the date of birth of the workman is 01.04.51 that has been recorded in the records of the management and this date of birth has also been entered in the record of nomination declaration form of provident fund. Worker during his service period had requested for issuing a certificate for the purpose of bank, hence the management issued a certificate dated 09.12.09 to the worker in which the date of birth had been mentioned as 01.04.51, as per record of the management. It is denied that the management has recorded wrong date of birth in the records of the worker and it is also denied that the worker had submitted any representation for correction of date of birth as the same had never been received by the management. The worker kept mum during the entire service period and he had not made any attempt with the higher authorities in this regard. But at the fag end of his retirement he raised the issue of date of birth and whatever has been recorded in the service record shall be deemed to be true and correct.

5. Accordingly management has alleged that there is no illegality in his action in retiring the worker on the basis of date of birth recorded in the record maintained by the management.

6. Worker has not filed any rejoinder in the case.

7. Worker has filed written evidence in support of his case but has not appeared in the witness box for his cross examination; therefore, whatever has been alleged in his written evidence shall not be read against the management.

8. Worker has also filed certain documents in the shape of photocopies but the originals of the same has nether been produced nor the documents were tried to be proved by the worker in support of his case. Thus virtually it is a case of no evidence.

9. In view of foregoing discussions the tribunal is of the opinion that the worker has failed to prove his case by adducing cogent evidence, hence the worker cannot be held for any relief and his claim is liable to be rejected and is accordingly rejected.

10. Reference is answered accordingly against the worker and in favor of the management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 917.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, अधीक्षक पुरातत्वेत्ता, पुरातत्व सर्वेक्षण भारत, आगरा एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 73/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/52/2006-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 917.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 73/2006) of the Central Government Industrial Tribunal cum Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Superintending Archaeologist, Archaeological Survey of India, Agra and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-42012/52/2006-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOR COURT,
KANPUR**

**Industrial Dispute No. 73 of 2006**

**Between**

Sri Uma Shanker son of Bhoori Singh,
C/o of Sri Surender Singh,
43/16, Sector 16-A,
Sikandra, Agra.

**And**

Superintending Archaeologist,
Archaeological Suvey of India,
Agra Division,
22, Mall Road
Agra-282001.

**AWARD**

1. Central Government, Mol & Employment, vide notification no. L-42012/52/2006-IR(DU) dated 31.10.06 has referred the following dispute for adjudication to this tribunal-

2. Whether the demand of Sri Uma Shanker for reemployment as casual worker under the management of Archaeological Survey of India, w.e.f.01.03.04 is legal and justified? If yes to what relief the workman is entitled and from which date?

3. It is pleaded by the worker in his claim petition that from time to time he worked at the post of Beldar under the management and he used to be paid his wages some times in his own name and some times in the name of his father. Worker lastly worked with the management during the period 16.03.2003 to 29.02.04 continuously and the management without showing any reason terminated the service of the worker with effect from 01.03.04. After the termination of the service of the worker management deployed several fresh hands in their employment name of such workers is mentioned in the list annexed with the claim petition. Despite repeated requests made by the worker to reemploy him in the employment but the management had not acceded his request. It is also pleaded that the then conservator assistant Sri Munujjar Ali was in the habit of tempering the muster rolls and made wrong entries in the name of workers and their fathers name the resultant effect was that they should deprived of having temporary status. Management has not followed the principle of last come first go and not only it but persons those were terminated after him are still working under the management. It is also alleged that despite best efforts to search alternate employment but worker could not get success. Management also prepares seniority list of casual workers but there in includes names of such workers who had never been worked with the management and against it the person who had worked with the management their names are not found in the seniority list.

4. On the basis of above allegation the worker has prayed that he be reinstated in service with back wages and attendant benefits.

5. Worker along with his claim petition has also filed photocopies of certain documents which shall be discussed at appropriate stage.

6. Management has filed his reply and by way of preliminary objection it is alleged that management discharges sovereign functions of government of India as such is not an industry.

7. On merit it is pleaded that applicant has not given any details as to when he was appointed or where he was engaged, as such in the absence of details particulars, it is not possible for opposite party to reply the case properly and defend the case as such the applicant be directed to furnish all particulars enables the opposite party to submit proper reply. As per available records the applicant has worked for 24 days in June 2003, 26 days in August 2003, 27 days in December 2003, 27 days in January 2004, 24 days in February 2004.

8. It is also pleaded by opposite party that management being department of government of India discharging sovereign function cannot appoint any person against recruitment rules and guidelines framed by government of India, and in case any vacancy falls vacant names of persons are called from employment exchange and after proper selection, selected candidate issued an appointment letter specifying the post, pay, place of

posting and other terms. Shri Uma Shankar has never been subjected to any selection process, no appointment letter has been issued to him, and therefore, Uma Shankar is not a bonafide employee of department and as department head never appointed him therefore question of termination of service does not arise. It is further alleged that whenever any work is created an estimate is framed and after obtaining sanction any person available at the site is engaged to complete their work. As such question of juniority and seniority does not exit and as work is completed or sanctioned funds are exhausted, the persons so engaged are automatically disengaged. It is denied that there is any scheme for granting temporary status to the casual worker.

9. Lastly it is alleged that under the facts and circumstances stated in the preceding paragraph management has requested that the applicant is not entitled for any relief and his claim is liable to be rejected.

10. Worker has not filed any rejoinder in the case.

11. Management per list of documents dated 04.02.2014 has filed attested copies of 5 muster rolls.

12. Worker has filed copy of reply received through RTI, copy of its application, copy of compliant made to Hon'ble Prime Minister by AR of worker, copy of registry receipt and acknowledgement of its receiving, copy of names of monuments sites of U.P. through list 52/1.

13. Worker has also filed list of workers dated 21.02.2012 ,whose services have been regularized and copy of application and its reply received through RTI vide list no. 50/1

14. He has also filed copy of application made under RTI for getting information regarding muster roll of monuments and vouchers which were refused by RTI through its letter dated 24.03.2014, paper no. 44/2. He has also filed copy of minutes of meeting of DSC for the selection of one post of chaukidar and one post of Monument cleaner.

15. Whereas worker Uma Shanker has examined himself as w.w.1, management has examined Sri Ramesh Kumar Singh as M.W.1.

16. Management has also filed certified copy of order sheet in misc. case no. 598 of 2002 surender singh vs Munnajjar and others which shows that this misc. case was registered on the protest petition of Surendra Singh was dismissed by order dated 28.01.2011 .

17. I have heard the arguments of the contesting parties and have also perused the records.

18. The case of the worker Uma Shankar is that he continuously worked under the management during the period 16.03.2003 to 29.02.2004 but he was discontinued/ terminated w.e.f 01.03.2004 without any reason, without any notice and without making payment of service benefits, therefore, his termination is illegal and abinitio void. It is also the case of worker that after his disengagement several new hands were engaged for work at the place from where he was terminated. It is pertinent to mention that worker has filed a list of employees dated 05.10.2004 with his claim petition which is paper no. 4/8 in which several persons were found to have been working at different monuments situated at Agra at the post of mess-on, baildar and stone cutters after his termination. With a view to avoid granting temporary status to old workers management has started a device to remove them from the service and to engage fresh hands and the worker has also become victim of this practice adapted by management. It is also the case of worker that work of maintenance of monuments and repair thereof is of permanent nature and is likely to continue for all times to come in future.

19. As against it management in para 4 of their written statement has accepted the working of the worker in the month of June 2003, August 2003, December 2003, January 2004 and February 2004.

20. Now it is to be seen whether management after the termination of services of worker has employed/engaged new hands in their employment.

21. MW1 Ramesh Kumar Singh in his evidence has admitted the working of the worker. In his cross examination witness has categorically admitted the working of worker from 2003 to 2004. Witness has denied the suggestion that copies of complete muster rolls were not filed by management. Witness has also expressed his ignorance to the suggestion as how many monuments are situated in Agra division or how many casual workers are working these monuments.

22. Management has filed attested copy of muster roll for the period 1.06.2003 to 30.06.2003, 1.08.2003 to 31.12.2003, 1.12.2003 to 31.01.2004 and 1.02.2004 to 29.02.2004 wherein working of Uma Shankar s/o Bhuri Singh is shown in muster roll paper no. 32/2, 32/3, 32/5, 32/6 and 32/7.

23. Worker examined himself as WW1 and in his examination in chief it is specifically stated by the worker that he continuously worked for the period 16.03.2003 to 29.02.2004. It is also deposed by the witness that sometimes he was paid his wages through muster rolls and sometimes through vouchers after obtaining thumb

impression of the witness. Management has not filed complete muster roll and copy of vouchers. Witness has denied the suggestion of the management that he worked in split form during the period June 2003 to February 2004. Witness has admitted that he received the wages mentioned in the muster roll. Witness in his cross examination has stated that he continuously worked for more than 240 days.

24. From the above discussion of evidence the hard fact which comes out is that the worker worked as casual labor under the management during the period 16.03.2003 to 29.02.2004 but the management deliberately has not filed complete copies of muster roll for the above period just to deprive the worker from the benefit of obtaining temporary status.

25. The representative of the worker has also filed reply of RTI given by the management paper no. 52/2 in which it is admitted that four person were appointed as MTS thus it is very much clear that management instead of providing employment to the casual labors are filling the vacancies through staff selection commission for the work that was done by the worker. Worker has also filed representation dated 6.02.2017 addressed to Hon'ble Prime Minister Government of India, New Delhi in which it was alleged that the management ignoring the claim of workers who had worked for last 20 to 25 years are making appointments through SSC. It is also stated that hundreds of workers are still working as casual labors under the order of the Tribunal or the Courts and they have not been regularized.

26. Worker has also filed paper no. 44/4 which is the minutes of meeting of DSC for selection of on post of chowkidar and one post of monument cleaner which shows that the committee on 28.04.12 has appointed one chowkidar and one monument cleaner directly. Management has not shown any compliance of section 25H of the Act that the present worker has been given any opportunity of reemployment. As section 25H of the Act clearly provide that where any workman was retrenched and employer proposes to take any person into his employment he shall give opportunity to the retrenched workman and who shall be given prior preference over other persons.

27. Therefore from the above discussion it stands clear that the management after disengagement of worker has engaged several new faces in their employment without providing any opportunity of reemployment to the worker. In this way worker has proved his case that ignoring his legitimate claim of reemployment under the management, management has engaged fresh hand in their employment to do the same work that was done by the worker.

28. Accordingly it is held that the demand of the worker Uma Shankar for his reemployment as casual labor under the management of the ASI w.e.f 1.03.2004 is legal and justified. Management is therefore directed to reemploy the worker in their employment w.e.f 1.03.2004 with seniority and consequential benefits.

29. Hence the Reference is passed accordingly.

SHUBENDRA KUMAR, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 918.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, प्रिंसिपल डायरेक्टर, ऑर्डिनेंस फैक्ट्रीज इंस्टिट्यूट ऑफ लनिंग, नागपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (CGIT/NGP/Appl. 06/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 918.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT/NGP/Appl. 06/2013) of the Central Government Industrial Tribunal cum Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Principal Director, Ordinance Factories Institute of Learning, Nagpur & Others and their workmen, which was received by the Central Government on 11.04.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE SHRI S.S. GARG, PRESIDING OFFICER,**
**CGIT-CUM-LABOURT COURT, NAGPUR**

**Case No.CGIT/NGP/Appln./06/2013-14**

Date: 27.02.2018

**Party No. 1** **(A)** : Principal Director,
Ordnance Factories Institute of Learning
Ambazari, Nagpur (MS).

**(B)** : Manorama Construction
34, Kabir nagar, Nandanvan Main Road,
Nagpur.

**Versus**

**Party No. 2** : General Secretary,
Ordnance Factory Contractor's Employee
Union, Sirsat Niwas, Plot no. 67, Navneet
Nagar, Amravati Road, Wadi, Nagpur

**AWARD**

(Dated: 27th February, 2018)

1. This application filed on behalf of Ordnance Factory Contractor's Employee union under section 2A of Industrial Disputes Act regarding discharge/dismissal/retrenchment from the services of the employer with regard to three employee namely Shri Vinod H. Ramariya, Shri Chetan B. Verma and Shri Sharad T. Dhoke.

In the statement of claim the union prayed that above three employees were illegally terminated from 01.07.2013. This claim was filed by union on behalf of workmen by asserting that party no.2 was duly registered under trade union act and its registration was valid. OFIL is an institute for imparting technical and vocational training to the officers, supervisors and employees of the Ordnance factory and is an integral part of Ordnance Factory. The Ordnance Factory is an establishment of Central Government registered under Factories Act. According to the workers, management cannot employ contract labour without express registration under the Contract Labour (R&A) Act, 1970. So in absence of registration/license the workers are deemed to be employee of principal employer.

According to the union 1100 employees of Ordnance Factory were attending the training programme in the year 2012-13. The institute is having hostel facility, mess, IT centre etc for imparting training. According to the union these workers employed by management through contractor for the posts of Date Entry Operator (DEOs) was essential. These workers were working continuously since more than 7 years but management avoid to regularization of the contract labour. According to the union these workers had been carrying out their work under the direct supervision and control of management. They worked more than 8 hours. Their work did not come under daily wages. They completed more than 240 days in the presiding 12 months.

According to the union although the contractor kept changing but the contract labours remains the same. They should report to incharge of ITC of OFILAJ. Contract labour shall engage the data entry operator with the approval of ED/OFILAJ. The union also prayed that conciliation officer seized the matter in conciliation from 05.06.2017 to 13.08.2017. Since no settlement was reached he had received a certificate under section 2 A of I.D. Act. They also asserted that contractor did not pay any retrenchment compensation, gratuity and provident fund to the workers. So they called termination of above worker is to be illegal and the workmen are entitled for full wages and reinstated forthwith.

2. Management filed the written statement by admitting that in conciliation proceeding, no settlement could be reached. He also admitted that OFIL Ambazari situated in the Ordnance Factory. Institute is headed by Principal Director. The training activities are carried out by their own officer. Management also asserted that activities incidental to training like swiping, cleaning and gardening are outsources and carried out by labour contractor. On behalf of the management it was denied that it was an industry and said institute is also not registered under Factories Act. They also submitted that outsourcing these incidental activities through labour contract by competitive tendering action as per laid down norms by the appropriate authority was for a period of 12 months.

According to the management on 20.06.2012 M/s. Manorama Constructions, Nagpur gave a contract for supply of data entry operator for the period of 12 months. He also submitted that employees union was neither registered nor recognized by OFIL Ambazari. It is also asserted that union never had any discussion with the said

matter. So this application is not maintainable. Management also mentioned registration number of the contractor in para no. 5 of his reply.

According to the management software development is done by regular employees of OFIL but programming activities are done by DEO. The workers of DEO was directly supervise by the contractor or his representative and wages paid by the contractor as per Minimum wages Act. On expiry of every contract the services of the contract labourers are automatically terminated and intimation is to be given to the Regional Labour Commissioner.

According to the management labour are employed by the contractor based on their choice. Therefore, principal employer had no role to play so claim of union had not merit. It is also asserted that EPF amount accrued to each contract labour were paid by EPF authority directly. It also asserted that question of illegal termination did not arise. So management prayed that provisions of Industrial Disputes Act are not applicable. So the workmen are not entitled to any relief. Hence, according to the management, instant application filed by the union is liable to be dismissed as not maintainable.

3. On behalf of the workmen rejoinder was filed in which they also mentioned the main fact of statement of claim. They also asserted that work allotted to the workmen by the contractor is false. They also asserted that workmen were unemployed from the date of their termination and have no source of income.

On going through these pleading following issues/ point of determination to be framed by this Tribunal for proper adjudication:-

i) Whether this application is maintainable under section 2(A) of the I.D. Act?

ii. Whether union was authorized by the employees?

iii. Whether these employees are the direct employment of the management?

iv. Whether they are entitled to reinstate with full back wages or any other relief?

4. On behalf of the union, General Secretary, Shri P.K. Mohanan was examined and on behalf of the management, Shir B.S. Markam as Sr. Principal Director was examined on support of their respective statement of claim and written statement.

5. Now we take argument of the workman with respect to their evidence. In the statement of claim, union has mentioned that, it is duly registered under Trade Union Act and its registration is valid. On the contrary, this fact is denied by the management. Shri P.K. Mohanan, in his court statement, admitted that, his union is not recognized by the Ordnance Factory Institute of Learning. He also admitted that, workmen have not filed any authorization to represent him in this case. He had also not filed any application in which, workmen requesting the union to raise the dispute in this Tribunal. He also admitted that, there was no resolution either by the General Body or by the Executive Body of the union to raise this dispute on behalf of the workmen. In this case, workmen were not examined by the union, so it appears that, union has no authority to raise this dispute before this Tribunal nor it was recognized union.

6. Union in their statement of claim asserted that, OFIL is an institute and come in purview of industry. OFIL and Ordnance Factory are the integral part of Ordnance Factory, which is an establishment of Central Govt. and registered under Factory's Act. According to the union, it is a factory, so provisions of I.D. Act are attracted but, P.K. Mohanan in para 21 of his court statement, admitted that, OFL and OFIL are two separate institute. OFIL gives training to the employees of Ordnance Factory. It also provides the facility of lodging and boarding of trainees. Now we want to see the management's evidence on this point.

7. Shri C.B.S. Markam asserted that, he has no direct link with contract labours but he has indirect link with the workers through sub-ordinate. He asserted that, the workers were given, Sunday as weekly holiday and works were allotted to the workers by the supervisor. The contractor is supposed to maintain the attendance register. The management has entered in a fresh contract as per the requirement. The contractor is supposed to pay the workers on monthly basis. It is difficult to say that after change of the contractor, whether the workers were changed or same.

8. On going the evidence, I found that, OFIL is not a factory, so, in my opinion, this dispute does not come in purview of Section 2-A of the Industrial Disputes Act.

9. On behalf of the union, it was asserted that, the contract of Date Entry Operator is essential and institute has been manning this position through contract workers. They asserted that, this arrangement is continued for more than seven years to avoid the regularization of contract labours. These workers are under direct supervision and control of management but that fact was denied by management in their W.S. Now we see the evidence on this part.

10. Shri P.K. Mohanan, admitted that OFIL gives contract to the contractors for providing lodging and boarding facility to the trainees. He also admitted that, OFIL did not appoint any worker to do the work but all the workers are engaged by the contractor. He also admitted that, OFIL neither appointed the workmen nor terminated their services.

He also admitted that, workman had been engaged by the different contractors and wages were being paid to the workmen by the contractors, which were reimbursed by the management.

11. On the contrary, Shri C.B.S. Markam asserted that, contractor is supposed to maintain supply of DEO as per supply order. He also admitted that, he was not aware, whether any daily work record was maintained in the office or not. He also asserted that, he was not aware that, payment to the workers was made either in cash or through bank. He also admitted that compensation was not paid to the workers either by management or through contractor.

12. On going evidence of both the parties, my opinion is that, workers were contract labours. They had no direct contact with the management, so I want to mention case laws presented by the workmen.

13. On behalf of the workman case laws namely Maharashtra State Road Transport corporation Vs. CRPA sangathan 2009 III CLR 262, Municipal Corporation of Greater Bombay Vs. KVSS Civil appeal no. 4929/2017 (SC) order dated 07.04.2017, Municipal Corporation of Greater Bombay Vs. KVSS Mumbai 2017 I CLR 798, Devendra Singh Vs. Municpal Cousil Sanaur 2011 II CLR 46, Kantibhai Ramabhai Gamar Vs. Anubhag Nk 2013 II CLR 627 and Amra. B Vs. State of Rajasthan 2013 IV LLJ 263 are presented in which the following principles were laid down:-

i. "It is held that unrecognized union which filed complaints in industrial court at Bombay was not competent to tile complaints of unfair labour practice under item 6 of Schedule IV of the Act- …….. Other benefits of permanency as are being directed to be given in Thane complaints."

ii. Held that "The absence of licenses and registration under the Contract Labour (Regulation and Abolition) Act, 1970, cannot, however, be made a sole foundation, to draw an inference that the contract is sham and bogus…….it cannot be considered that those workers had back door entry in the service."

iii. Held that "In the given circumstances though the regular procedure for engagement of the appellant in service was not followed, the High Court did not examine the background in which he was engaged in service in proper perspective. The delay of four to five years in adjudication of labour disputes is a normal phenomenon."

iv. When a daily wager has served continuously for five years or so, but fails to prove 240 days continuous service in the last preceding year, as the work was not provided by the employer he cannot be validly terminated by the employer, without complying with the provisions of S.25-F of the I.D. Act.

v. Held that "Arrangement of substitution of one set/replacement of temporary/contractual/ adhoc employees by another set is deprecated by court…….However, no justification would remain if one set of contractual employee is replaced by another."

In some of the above case laws, Hon'ble Lordship of Supreme Court and High Court, it was observed that "These orders shall not be treated as precedent as by and large, it is based on consensus". It was also observed that, "These views of these Courts in exceptional situation, for doing complete justice……in complaint (ULP) No. 442/92" and it is also observed that, "In the circumstances, setting aside the award in the equity jurisdiction of the Court". Now we come to factual position of this case in hand.

14. On the above discussion, I observed that, OFIL is not an industry. Union was not recognized by the management, workers also authorized the union to file their respective claim and worker also examined in this Tribunal to support their respective claim. I also observed that, workers were employed by contractor, which is duly authorized by the management and OFIL is also registered with RLC for the purpose of engaging miscellaneous contract labour through contractor. So, in my opinion, this application U/s 2-A of I.D. Act is not maintainable and workers (DEOs) are not entitled any relief. Hence, it is ordered:

**ORDER**

**Application under section 2-A of the I.D. Act, 1947 is not maintainable. Workers (DEOs) are not the employees of OFIL. So, they are not entitled to any relief.**

S. S. GARG, Presiding Officer.

नई दिल्ली, 1 जून, 2018

**का.आ. 919.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महानिदेशक दूरदर्शन केंद्र, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 2, दिल्ली के पंचाट (संदर्भ संख्या 124/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-40011/33/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 919.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 124/2014) of the Central Government Industrial Tribunal cum Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Director General, Doordarshan Kendra, New Delhi & Others and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-40011/33/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2, DWARKA COURTS COMPLEX : NEW DELHI**

**ID No. 124/2014**

Ashok Kumar
s/o. Shri Balam Ram
r/o. 1287, Transist Camp Govindpuri,
Kalkaji,
New Delhi 110019. …Workman/ Petitioner

**Versus**

1. The Director General,
Doordarshan Kendra, Mandi House,
New Delhi 110001.

2. The Director,
Delhi Doordarshan,
Coopernicus Marg,
Mandi House, Phase-II,
New Delhi 110001 ... Management/ Respondents

**AWARD**

In the present case, matter was referred to Central Government Industrial Tribunal cum Labour Court No.2, New Delhi vide letter No.L-40011/33/2012-IR(DU) dated 19.07.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of Delhi Doordarshan in not regularizing the services of the workman Shri Ashok Kumar and instead terminating his services in December, 1999, is illegal and unjustified? If so, what relief he is entitled and what directions are necessary in this respect ?'

2. Both parties were put to notice and the claimant., Shri Ashok Kumar filed statement of claim. As per the averments made in the claim petition, the workman was engaged as a casual staff (Production Artist) since 1-1-1996 with the Management. This is a second round of litigation and earlier consequent upon his removal from service in November, 1999, the workman had moved Hon'ble Central Administrative Tribunal vide O.A. No.2519/1999 seeking assignment and regularization on the ground that he was working in Doordarshan for quite long time & had completed much more than 240 days of service in a calander year entitling him for regularization under the Scheme of Reguliazation of casual artists in Doordarshan dated 17/3/1994. The said O.A. was disposed of vide judgement dated 11/12/2000 with following observations :-

"7. In view of the foregoing discussion, the respondents should consider regularization of the applicants, in accordance with the Scheme dated 17/3/1994 and if this is not applicable to them in accordance with the Scheme that may be framed by them to regularize casual artists who have been appointed subsequent to 31.12.1991, on fulfillment of certain conditions stipulated by the Department within three months from the date of receipt of a copy of this Order. They also also engage the applicants whenever there is work.

8. O.A. is disposed of as above. No costs."

Against the aforesaid judgement, the Management preferred Civil Writ Petition No.2589/2001 before Hon'ble High Court, which was clubbed along with CWP No.319/2001 and other petitions pertaining to employees of All India Radio, though the workman was an employee of Doordarshan. Hon'ble High Court decided & allowed the writ petitions vide a common judgement dated 13/2/2002. Since AIR & Doordarshan has separate rules & regulations and that there was a policy for regularization for the Staff Artists of Doordarshan, whereas AIR had no such policy, the workman approached the Hon'ble Supreme Court in SLP (Civil) No. 7954/2002 which was disposed of as withdrawn vide order dated 26/4/2002, with liberty to the workman to approach the High Court. Workman preferred a review application bearing RA No.13061/2003 before Hon'ble High Court of Delhi, which was dismissed on the ground of delay and hence, the matter was not decided on merits.

3. It is the case of the workman that regularization of casual employee is a policy decision being taken by the Govt. from time to time and pursuant to judgement dated 14/2/1992 passed by Hon'ble Central Administrative Tribunal in O.A. No.563/1986 (Anil Kumar Mathur Vs. UOI), the Doordarshan/ Management herein formulated a regularization scheme vide OM No.2(3)/86-S.I. dated 9/6/1992 wherein also alleged crucial date i.e.31/12/1991 was insisted upon. In other cases bearing OA No.1359.93 (Neeraj Bhanot Vs. UOI) and OA No.1360/93 (LS Rawat Vs. UOI) decided vide judgement dated 14/2/1993, Central Administrative Tribunal held that the scheme does not exclude consideration of those casual artists who were engaged after 31/12/1991 and that respondents shall consider regularization the applicant as Production Assist ant in his turn strictly in terms of unit seniority. In compliance of the aforesaid judgement, the workman Neeraj Bhanot was regularized on 25/10/2000, whereas another workman Mr. L.S. Rawat was regularized on 26/5/2005. In the wake of aforesaid decisions, the workman herein preferred a representation dated 2/2/2010 to the Management No.1 which is still pending consideration. Hence, prayer has been made that the Management be directed to regularize the service of the Workman as Production Assistant w.e.f. 11/12/2000 i.e. the date of judgement of Hon'ble CAT with all consequential benefits in terms of law laid down by Hon'ble Delhi High Court vide judgement dated 28/1/2004 in CWP No. 2612/20003.

4. Management has resisted the claim of the Workman and filed written reply, taking preliminary objections that the present claim is a misuse of the process of law inasmuch as no cause of action has arisen in favour of the workman and that the present claim is hopelessly barred by res-judicata as the Workman has lost battle even upto the level of the Apex Court. On merits, management denied most of the averments contained in the statement of claim. It has been alleged that dispute between the parties has attained finality, inasmuch as the OA No.2519/1999 preferred by the workman was disposed of by the Central Administrative Tribunal was disposed of vide order dated 11/12/2000 and the said order was set aside by Hon'ble High Court vide common judgement dated 13/2/2002 passed in the writ petitions moved by the Management. Thereafter, the Workman filed a SLP which was subsequently withdrawn with liberty to move Hon'ble Delhi High Court. Review application filed by the Workman before Hon'ble Delhi High Court was dismissed. Prayer has been made for rejection of the statement of claim of the Workman.

5. On the pleadings of the parties, following issues were framed on 19/06/2013 :-

1) Whether order dated 11.12.2000 passed by Central Administrative Tribunal operates as res judicata ?
2) As in terms of reference ?

6. The Claimant in support of his case examined himself as W.W.1 and tendered his affidavit Ex.WW1/A along with documents Ex.WW1/1 to WW1/14

7. On the other hand, the Management in order to rebut the case of the claimant examined two witnesses namely Mr. Ram Lal, Administrative Officer working at Doordarshan Kendra, Delhi as MW1 who tendered his evidence by way of affidavit Ex.MW1/A, and Mr. V. Venkatesh, Administrative Officer who also tendered his evidence in the form of affidavit Ex.MW2.A.

8. I have gone through the evidence adduced on record ad have given my thoughtful consideration to the arguments advanced on behalf of the parties.

**Issue No. 1 and 2 :-**

9. Both these issues are being taken up together for the purpose of discussion as they can be conveniently disposed of.

10. The doctrine of res judicata as codified in Section 11 of Civil Procedure Code is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When an issue directly or substantially the same – whether on a question of fact or a question of law, has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was taken to a higher court or because the appeal was dismissed or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again.

11. Issue No.1 being legal in nature and the fact that Management in fact has not led any evidence in respect, this issue has to be decided in the wake of evidence adduced on record by the workman/claimant herein. It is apparent from the record that the workman/claimant had moved Hon'ble Central Administrative Tribunal vide O.A. No.2519/1999 seeking regularization of his services on the ground that he was working in Doordarshan for quite long time & had completed much more than 240 days of service in a calander year entitling him for regularization under the Scheme of Regularization of casual artists in Doordarshan dated 17/3/1994. The said O.A. was disposed of vide judgement dated 11/12/2000, directing the Management to consider regularization of the applicant/claimant, in accordance with the Scheme dated 17/3/1994 and if the same is not applicable to them in accordance with the Scheme that may be framed by them to regularize casual artists who have been appointed subsequent to 31.12.1991, on fulfillment of certain conditions stipulated by the Department within three months from the date of receipt of a copy of the Order. Thereafter the Management had moved the Hon'ble High Court vide CWP No.2589/2001, which matter was clubbed along with CWP No.319/2001 (titled as UOI Vs Anshul Sharma & others) and other such petitions pertaining to employees of All India Radio, though the workman was an employee of Doordarshan. Hon'ble High Court decided & allowed the writ petitions vide a common judgement dated 13/2/2002. It is not out of place to mention here that the decision in the aforesaid CWP No.319/2001 was primarily in respect of employees working as Casual Artists in All India Radio, whereas the workman/claimant herein was admittedly had been working as a casual staff (Production Artist) since 1-1-1996 in Doordarshan. A perusal of the judgement rendered by the Hon'ble High Court in aforesaid CWPs would show that in the said judgement, there is no specific reference to the set of employees of Doordarshan, However, the decision given by Hon'ble CAT vide order dated 11/12/2000 was set aside by the Hon'ble High Court vide judgement dated 13/2/2002, in the backdrop that petitioners/employees therein were not fulfilling the essential conditions of regularization and that there was no scheme of regularization for the employees of All India Radio. It is undisputed fact that a scheme vide O.M. No. vide OM No. 2(3)/86.SI, dated 17/3/1994 (Ex. WW1/11) was formulated by the Doordarshan (Management herein) and the cut off date as mentioned in the aforesaid scheme is 31/12/1991. Since the Hon'ble High Court had clubbed case of the workman/claiman herein viz. the CWP 2589/2001 (titled Union of India & others Vs. Ashok Kumar and another) with the CWP No.319/2001 (UOI Vs. Anshul Sharma and others), as such common judgement dated 13/2/2002 was rendered by the Hon'ble High Court. As discussed above, a bare perusal of entire judgement of the Hon'ble High Court would show that there is no mention of Casual Production Artists who were working in Doordarshan.

12. It is not out of place to mention here that claimant herein filed Review Application bearing RA No.13061/2003 before Hon'ble High Court as per direction of Hon'ble Supreme Court in SLP (Civil) No. 7954/2002 but the same was dismissed on the ground of delay. Now, the vital question before this Tribunal is as to whether the judgement given by Hon'ble CAT operates as res judicata partly. It is clear that in view of the decision of Hon'ble High Court in CWP No.319/2001 (UOI Vs. Anshul Sharma & others) and other CWPs, no relief was given to the workman/claimant herein and that the judgement dated 11/12/2000 of Hon'ble CAT in OA No. 2519/1999, was set aside by Hon'ble High Court. A careful analysis of the same, as discussed above, would show that in fact that there was no regularization scheme in respect of the employees of All India Radio, whereas there happened to be a regularization scheme (Ex.WW1/11) in respect of employees of Doordarshan.

13. It is also evident from the record that later on in the matter before Hon'ble High Court in the matter CW 2612/2003 (CEO Prasar Bharti & others Vs. Lakhpat Singh Rawat), wherein the respondent workman was engaged as Casual Production Assistant on 29/2/1992, a similar issued was involved as to whether the workmen appointed after 31/12/1991 – the date fixed under the scheme for regularization of casual artist, are entitled to be considered for regularization, in view of the scheme formulated by the Doordarshan vide OM No. 2(3)/86.SI, dated 17/3/1994. This issue was decided in affirmative by holding as under :-

> "We find that Tribunal in OA 1359/1993 filed by Mr. Neeraj Bhanot had ruled that cut date (31.12.1991) fixed in petitioners scheme framed in 1992 was not the ultimate deadline and that those appointed after this date were also entitled to consideration for regularization of their services against the remaining vacancies after accommodating all those who had been engaged prior to 31.12.1991. Admittedly, this verdict has gone unchallenged by the petitioners and it holds the field till date. If that being so, the cut off date fixed in the scheme formulated by petitioners has ceased to be the deadline beyond which a person engaged after 31.12.1991 would be disentitled to be considered for regularization. That being so, there was nothing wrong

> with the Tribunal's direction asking petitioners to consider the respondent for regularization of his services because his right of consideration survived the petitioners deadline and remained intact as a consequence of Tribunal verdict in Bhanot's ase. Therefore, there is no merit in petitioners stand that this respondent was not eligible for consideration for regularization under the Scheme. The Tribunal direction to that extent is affirmed…:"

It is thus, clear from the perusal of aforesaid para of the judgement rendered by Hon'ble High Court that the Casual Artist who were engaged after cut off date of 31/12/1991 are entitled to be considered for regularization, in view of the judement dated 28/1/2004 (Ex.WW1/13) rendered by the Ho'ble High Court, which is subsequent to the judgement passed in CWP No.2589/2001 clubbed with CWP No.319./2001 (Union of India Vs. Anshul Sharma and others) & others – Ex.WW1/8).

14. Perusal of judgement Ex.WW/13 in CEO Prasar Bharti Vs. Lakhpat Singh Rawat (supra) would show that in the said case also, the Management had taken a specific plea that case of the claimant/workman is not covered by the scheme for regularization as he was appointed after the cut off date and this plea was rejected.

15. Even otherwise, it is settled principle of law that that the judgement so rendered by the Hon'ble High Court is binding and applicable to the parties concerned. However, if the question referred/decided in the earlier judgement was again agitated before the Hon'ble High Court and the High Court has taken a view different than that in earlier case, keeping in view the judgement of the Hon'ble Supreme Court, in that eventuality it is the subsequent judgement rendered by Hon'ble High Court which will be applicable to the parties. In this regard, reference can be made to the judgement of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others (2015) 1SCC 347** wherein Hon'ble Apex Court while dealing with the question whether the benefit of a judgement can be taken by all similarly situated employees who were not party to the Writ Petition, had answered the same in affirmative, by observing as under :-

> "The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution. This principle needs to be applied in service matters more emphatically as the service jurisprudene evolved by the Supreme Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

Therefore the judgement rendered by Hon'ble High Court in the case of **CEO Prasar Bharti Vs. Lakhpat Singh Rawat (supra),** which is directly in issue relating to the employees working in Doordarshan, would be applicable to the parties and benefit of the same can also be taken by similarly situated workman, though workman/claimant herein was not party to the Writ Petition in **CEO Prasar Bharti Vs. Lakhpat Singh Rawat (supra).**

16. It is undisputed fact that workman/claimant was engaged as a casual staff (Production Artist) since 1/1/1996 and he worked till December, 1999 when his services were terminated by the Management. Thus, the workman./claimant worked for about four years till the date of his termination. The workman/claimant when appeared in the witness box as WW1 deposed in his cross examination recorded on 20/8/2015 that he is now working with the Management from December, 2003 till date. As per version of the workman/claimant, he had given a representation dated 2/2/2010 to the Management for regularization of his services but same is still pending consideration. The witness examined by the Management namely MW2 Shri V. Venkatesh, Administrative Officer deposed in his cross examination that the judgement in the case of L.S. Rawat still holds the field.

17. In view of the above it is held that though the case of the workman/claimant herein is partly barred by the principle of res judicata as the judgement dated 11/12/2000 given by Hon'ble Central Administrative Tribunal was set aside by Hon'ble High Court vide a common judgement dated 13/2/2002, yet due to subsequent pronouncement in CEO Prasar Bharti Vs. Lakhpat Singh Rawat (supra), the workman /claimant can not be denied the relief for regularization on the basis of parity and equity, inasmuch as other co-workers namely Neeraj Bhanot and Lakhpat Singh Rawat have already been granted benefit of regularization by the Management and the decision rendered in the case of CEO Prasar Bharti Vs. Lakhpat Singh Rawat (supra) still holds the field.

18. In the light of aforesaid facts and circumstances, this Tribunal has no hesitation to hold that the action of the Management in not regularizing the services of the workman is illegal and unjustified and that the workman is entitled to be regularized under the Regularization Scheme dated 9/6/1992.

19. As a sequel to my aforesaid discussion, I am of the considered view that the ends of justice will meet if the Management is directed to regularize the services of the workman/claimant under the Regularization Scheme dated 9/6/1992 against the vacant posts, from the very date when the services of co-worker immediately next junior to the

workman/claimant were regularized. The Management is also directed to grant the workman/claimant, all consequential/monetary benefits from the very date of his regularization. The Award is passed accordingly.

Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 920.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स न्यू हाइटेक इलेक्ट्रिकल, सरकारी ठेकेदार, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 165/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 920.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 165/2016) of the Central Government Industrial Tribunal cum Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the M/s New Hitech Electrical, Government Contractor, New Delhi & Others and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI.**

**ID No. 165/2016**

Mohd. Shakir Hussain,
s/o. late Shri Abdul Rahim,
r/o. B-4/365, Paryatan Vihar,
Vasundhara Enclave,
Delhi 110096. …Workman/Claimant

**Versus**

1. M/s New Hitech Eletrical, Govt. Conractor
Through its
CEO/authorized Perso,
284, DDA Market, under Defene Colony Flyover,
Near Jangpura Extn.,
Metro Statio, New Delhi 110024.

**Also at**

33, Prime Minister Society,
B Block, Vikas Puri, New Delhi.

2. The C.M.D, ITDC,
6TH Floor Scope Building,
CGO Complex, Lodhi Road,
New Delhi.

3. General Manager,
Ashoka Hotel,
50-B Chankaya Puri,
New Delhi 110021. …. Managements/Respondents

**AWARD**

This is a claim filed directly by the Workmen/claimants Jagdish Prasad, Parmeshwari and Ram Kumar Yadav under Section 33 read with Section 2-A of the Industrial Disputes Act (hereinafter referred to as "the Act"), with the averments that the workman/claimant was appointed as Technician on permanent post in the D.G. Room, Ashok Hotel with the respondent No.3 vide appointment letter dated 30/6/2013 through Management No.1 on a salary of Rs. 5000/- per month. During the course of his employment, the claimant showed and performed his duty with great devotion and hard work and even the Management rewarded appraisal for his satisfactory performance. It is alleged that Management never gave the benefit of ESI Card, PF, uniform etc to the workman during his service since 30/6/2013. Salary/wages used to be paid to him by cash, whereas the Management No. 1 used to receive payment of bills from respondent No.2 and 3 by showing fake cheque number. The claimant had complained several times for the illegal acts of Management No.1 to the Management No.2 and 3 in writing but to no avail. Claimant was not paid salary for the months from November, 2014 to April, 2015 while tender was again awarded to Management No.1 for one year w.e.f. 1/10/2016. Management No.1 suspended the claimant from May, 2015 to August, 2015. However, he was again taken on record w.e.f. 1/5/2015 but as Helper and he is performing his duty with great devotion. He had moved Office of Labour Commissioner regarding illegality and irregularity of the Management and a certificate dated 7.12.2015 was issued by the said Office to approach this Tribunal. Hence, the workman/claimant has prayed that Management be directed to confirm his services alongwith payment of salary and increment as per rules w.e.f. 30./6/2013 and to provide him PF, ESI/medical facilities etc. and the Management be restrained from terminating his services.

2. Notice of the claim petition was sent to the Managements/respondents. Management No.1 opted not to appear and contest the claim petition, whereas Management No.2 and 3 resisted the claim of the workman, by filing joint reply and took preliminary objections inter-alia that claim petition has been filed with ulterior motives and same is not maintainable against Management No.2 ad 3, inasmuch as claimant is admittedly the employee of Management No.1 who had deployed him for carrying out the AMC work. There is no liability of the Management No.2 and 3 towards the claimant. Prayer has been made for dismissal of the claim petition.

3. After filing of the joint reply by Management N o.2 and 3, opportunity was granted to the claimant to file rejoinder but he did not file any rejoinder, despite the fact that number of opportunities were granted to the Claimant at his request. It is a matter of record that neither the claimant filed rejoinder nor adduce any documentary or oral evidence to substantiate the averments as made in the claim petition. Perusal of the record shows that the claimant did not participate in the proceedings before the Tribunal from 24/11/2017 onwards, despite the fact that matter was adjourned time and again and ultimately this Tribunal was constrained to reserve the matter for passing the No Dispute award.

4. In view of the fact that the claimant has not led any evidence in support of his case, this Tribunal is constrained to pass No Dispute Award in the matter. Since the matter has not been decided on merits, there will be no bar for the claimant to file afresh claim petition in accordance with law for adjudication of the controversy in issue or to seek any other relief to which he is otherwise entitled to. Award is passed accordingly.

Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dt. 22.05.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 921.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, प्रबंधक, मैसर्स गोदावरी फार्म एंड सर्विसेज, गाजियाबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 110/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 921.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 110/2016) of the Central Government Industrial Tribunal cum Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Manager, M/s. Godawari Farm & Services, Ghaziabad & Others and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI.**

**ID No. 110/2016**

Uma Shankar s/o. Shri Rameshwar Singh,
C/o. Shri Ranjit Singh, Advocate,
Chamber No.C-35, CL Joseph Block,
Tis Hazari Court, Delhi 110054. …Workman

**Versus**

1. Manager,
M/s Godawari Farms & Services,
200/7, Sector 111-A, Rachna Vaishali,
United Bank of India Lane,
Ghaziabad-201012 (UP)

2. Chairman,
Delhi Metro Rail Corporation Ltd.
Metro Bhawan, Barakhamba Road,
New Delhi 110001. … Management

**AWARD**

This is a claim filed directly by the Workman under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"), with the averments that workman was engaged for the post of Housekeeping Manager by Management No.1 in April, 2013 and his salary was Rs.7500/- per month. It is alleged that the Workman was appointed to the post of Housekeeping Manager but as per directions of Management No.1 he was doing the work of Housekeeping i.e. to look after the sanitation as well as other clerical work. The Management No.1 got opened his bank account with United Bank of India, Vaishali, District Ghaziabad and also got issued ATM Card but the passbook, cheque book and ATM Card were retained by the Management No.1 and they used to deposit the salary of the Workman in the said account but later on they used to withdraw all the amount of salary through ATM as per their wishes. A sum of Rs.10338/- was withdrawn on 12/8/2015 from the said Account by the Management No.1. Management No.1 had taken contract from Management No.2 and as per directions of Management No.1, the Workman was initially working under Management No.1 at Seelampur Metro Station and thereafter at Mundka Staff Quarters. Workman performed his duty honestly and no adverse remarks were made against him at any stage. The Management has not issued any appointment letter, attendance card, leave book or pay slip despite oral complaints made by the Workman. Only ESI Card No.1013756132 was issued to the Workman and that his PF subscription amount against PF No.DL/25675/515 used to be deducted but without any receipt. The Workman Time & again requested the Management to provide him all facilities as per law, as a result of which his signatures were obtained on various blank papers and vouchers etc. But later on, the Management without assigning any reason terminated the services of the Workman illegally on 12/8/2015. Management has not even paid earned wages, leave encashment, bonus, overtime and arrears of minimum wages and other dues to the Workman for the period 1-6-2015 to 12/8/2015. Legal demand notice was sent by the Workman to the Management by Speed Post on 26/8/2015 but no reply thereto was given by the Management. The Workman on various occasions approached the Management for his reinstatement but no heed was paid. The workman has claimed that he is ready and willing to perform his duty under the Management but the Management is refusing to comply its obligation.

2. Separate replies/written statements were filed by the Management No.1 and 2.

3. It has been alleged by the Management No.1 that the petition filed by the Workman is liable to be dismissed because the applicant/Workman does not fall within the realm and scope of the definition of Workman as provided in the I.D.Act,1947. As per his own case, the Workman/applicant was employed I the managerial and supervisory capacity with the designation of Manager (Housekeeping) and as such provisions of Section 2-A are not attracted. The applicant/Workman is misleading the Court by misrepresenting the facts with regard to his unautbhorised absence from duty and the instant petition is nothing but a pressurizing tactics and an abuse of the process of law. In fact, the applicant left the job for better prospects and now he wants to extort money and not to rejoin the duties. It is alleged that the applicant since beginning was very lethargic and there had been numerous complaints against him for which he

was warned many a times by the Management. The mere fact that ESI and PF facilities were provided to the applicant/Workman goes to show that other allegations about violations of labour law are devoid of merits. The management No.1 has denied the allegations that the applicant was made to sign on blank papers and vouchers and was terminated on the same day i.e. 12/8/2015.

4. In the written statement, the Management No.2 has alleged that the Workman was never employed by the Management No.2 and as such, no relationship of employer and employee ever existed between him and the Management because the claimant/Workman has himself stated in his claim petition that he was employed with Management No.1. He is not a workman as defined under Section 2(s) of the Act. In fact, no industrial dispute as defined under Section 2-A of the Act was/is in existence. All other allegations made by the workman in his petition are stated to be wrong and denied by the Management No.2, specifically stating that there was no relationship of employer and employee between them. Prayer has been made that statement of claim made by the Workman/claimant be rejected accordingly.

5. The claimant/workman filed rejoinder wherein he denied all the allegations made by the Management and reiterated his own case as set up in the claim petition.

6. On the pleadings of the parties, following issues were framed on 24-11-2016 :-

1. Whether termination of the claimant on 12/8/205 is illegal, null and void, as alleged and whether the claimant is entitled for reinstatement alongwith back wages.
2. Whether the claimant was employed by M/s Godavari Farms and Services and there is no relationship of employer and employee between the claimant and Delhi Metro Rail Corporation ?

7. The Claimant in support of his case examined himself as W.W.1 and tendered his affidavit Ex.WW1/A along with documents Ex.WW1/1 to WW1/6.

8. It is significant to mention here that Management No.1 after filing of it written statement opted not to participate in the proceedings and case was proceeded ex parte against Management No.1 vide order dated 10/3/2017.

**Issue No. 1 and 2 :-**

9. Both these issues are being taken up together for the purpose of discussion and they can be conveniently disposed of. It is clear from the pleadings as well as evidence on record that the claimant was engaged by the Management No.1 i.e. M/s Godavari Farms & Services in April, 2013 on the post of Housekeeping Manager at the salary of Rs.7500/- per month. In this regard, it is relevant to refer to the affidavit of the claimant i.e. WW1-A and same is on similar lines as per averments of the claimants made in the claim petition. The claimant has also tendered his Identity Card Ex.WW1/1, bearing No.3814 and valid upto 30/3/2015 wherein his designation has been shown as Housekeeping Manager. There is also certificate Ex.WW1/2 issued by one Ravi Ranjan, Team Leader, Mundka Staff Quarter in favour of the claimant regarding issuance of ATM Card. The claimant has also filed copy of ESI certificate Ex.WW1/3 which clearly shows that claimant alongwith his family members was entitled for ESI medical facilities. He also filed OPD Ex.PW1/4 which shows that claimant Uma Shankar was getting medical facility under the scheme of ESI. Legal notice given by the claimant to the Management is Ex.WW1/5 wherein the claimant has reiterated all the relevant facts and copy of the postal receipt is Ex.WW1/6. There is no evidence on behalf of Management No.1 as Management No.1 was proceeded ex parte. Management No.1 did not appear on several occasions. The law is fairly settled that in case a party to a case does not enter to the witness box, nor adduces any evidence in support of the stand taken in the pleadings, in that eventuality the case put forth by the other party shall be deemed to be accepted. Since there is no cross examination of the claimant WW1 on behalf of Management No.1, as such version of the claimant regarding his engagement as a Housekeeping Manager as well as termination by the Management No.1 on 12/8/2015 is liable to be accepted. It is also the case of the claimant that his salary and other dues have not been paid by the Management No.1 since 1-6-2015 to 12-8-2015.

10. Admittedly in the present case, there is no issuance of notice by the Management No.1 as required under Section 25 of the Act. Evidence of the claimant regarding his engagement as Housekeeping Manager since April, 2013 is unrebutted and there is no evidence to the contrary, to show that claimant was not in service of Management No.1. Stand of the Management No.1 that claimant has left the job voluntarily for better future prospects is not supported by any evidence on record. Even if it is presumed to be so, in that eventuality the Management should have taken in writing from the Workman/claimant or should have sent a notice to him to show cause as to why he was not attending his duties regularly. The averments of the Management No.1 regarding abandonment of the job can not be accepted in absence of any proof on record. Even otherwise, the law is fairly settled that in case the Management takes a plea of abandonment of job, in that eventuality also, holding of an enquiry is imperative under the law, in view of the

judgement of Hon'ble Apex Court in the case of *DK Yadav Vs. JMA INDUSTRIES 1993 LLR 583 (SC)* and Ratio in this respect still holds good and has been followed by the Courts till date.

11. In view of the aforesaid discussion, it is held that termination of the claimant from his job is contrary to the provisions of Section 25 –F of the Act, as one month's mandatory notice as required under the said sub-section has not been given by the Management No.1 nor one month' salary in lieu of such notice was paid to the claimant at the time of his so called termination. Both these issues are decided accordingly.

12. Though the Management in the preliminary objection has taken a plea that claimant is not the Workman but again no evidence in this respect has been adduced by the Management to show as to how claimant herein does not fall within the definition of "workman". It is apparent from the evidence on record that claimant was doing the work of Housekeeping Manager. He was not in supervisory or administrative post, requiring him to perform only administrative duties. While interpreting Section 2(s) of the Act, Hon'ble Supreme Court in the case of Davinder Singh Vs. Municipal Council Sanaur AIR 2011 (SC) 2532 has observed that the source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

13. In view of the ratio of law enunciated in the above ruling, the claimant herein admittedly falls within the definition of "Workman" under Section 2(s) of the Act. Even the Management No.1 admitted in the preliminary objections of the written statement about the employment of the claimant with them but their stand is that he was not posted in managerial and supervisory capacity. As discussed above, there is no evidence regarding this plea taken by the Management No.1. As such, the contention of the Management No.1 that claimant is not workman under Section 2(S) is hereby rejected.

**RELIEF :-**

14. Now the residual question arises for consideration is as to what relief the claimant is entitled to. As discussed above, the claimant was engaged in April, 2013 and as per his own pleadings, his services were terminated on 12/8/2015 He has worked just for over two years. There is nothing on record to suggest that job of the claimant was on permanent basis or that he was given any regular post by the Management No.1. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> " Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

15. Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs.1 lakh (Rupees One Lakh) appear to be just and reasonable, and the same is payable to the claimant herein by the Management No.1. Award is passed accordingly.

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 922.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, एनडीएमसी, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 255/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-42011/146/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 922.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 255/2015) of the Central Government Industrial Tribunal cum Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Commissioner, NDMC, New Delhi and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-42011/146/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075**

**ID No.255/2015**

Shri Balak Ram S/o Shri Puran Singh, represented by
President, MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House, Shah Jehan Road,
New Delhi ...Workman

**Versus**

The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre, Minto Road,
New Delhi 110 002 …Management

**AWARD**

Reference under Section 10 sub section (2A) of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment vide its orders No.L-42011/146/2015-IR(DU) dated 02.11.2015 for adjudication of an industrial dispute with the following terms:

> 'Whether the action of North Delhi Municipal Corporation, in not granting promotion of Garden Chaudhary in the pay scale of Rs.5200-20200 revised from time to time with effect from 01.01.2006 to the workman Shri Balak Ram, S/o Shri Puran Singh is fair and legal? If not, to what relief the workman is entitled to and from which date?'

2. Both the parties were put to notice and the workman Shri Balak Ram, filed his statement of claim, wherein it is alleged that he has been allotted work of Chaudhary with effect from 01.01.2006 by the competent officers of Horticulture Department and was initially posted under Rohini Zone Horticulture Zone and was later on transferred to Karol Bagh Zone and is presently posted under Civil Lines Zone with effect from 09.08.2012 where he is performing his duties as acting Chaudhary. However, he has been denied pay scale of Chaudhary, revised from time to time. The workman has got payment of salary in the lower pay scale of mali, i.e. Rs.750-940 instead of Rs.950-15000 revised from time to time and has been denied the scale of Chaudhary, effect from 01.04.1989. Action of the management is alleged to be illegal & unjustified and amounts to unfair labour practice. Duties of mali is presently of an unskilled workman whereas duties of Chaudhary is skilled in nature belonging to Group C category of employees.

3. It is also averred in para 8 of the statement of claim that Hon'ble High Court, Delhi, in the matter of Jai Chand vs Municipal Corporation of Delhi (CW 6514/2001) has disapproved the non-payment of wages for those malis who are working on the post of Chaudhary vide its judgement dated 02.05.2003. After the above judgement of the Hon'ble Court, Municipal Corporation of Delhi (Horticulture Department) has also issued order No.ADC(Hor.)/AO(Hort)/DA-VII/05/457 dated 04.03.2005 (Annexure B). There is also reference to the judgment of Division Bench of High Court of Delhi in the matter of Municipal Corporation of Delhi vs. Sultan Singh wherein also plea of the MCD regarding non-payment of wages of Chaudhary to malis who are doing working of Chaudhary, was turned down by the Hon'ble High Court in judgement dated 27.07.2011.

4. It is also averred that similarly situated workmen who were performing duty of Chaudhary were granted pay scale of Chaudhary from the date when they were asked to perform duty on the higher post and management has challenged the order dated 27.07.2011 of the Labour Court in the matter of MCD vs Sultan Singh as well as before the Hon'ble Supreme Court of India by Special Leave to Appeal No.S20069/2011 and the plea by MCD has been dismissed by both, before the High Court as well as the Hon'ble Supreme Court. Workman, herein, is also similarly situated and doing work of Chaudhary and as such, entitled to same benefits. Finally, it is prayed that an award may be passed in his favour.

5. Management has demurred claim of the workman by taking preliminary objections, inter alia, present dispute not being an industrial dispute as there is no espousal and no demand notice has been served upon the management, claim being misconceived, claim being stale etc. There is prescribed procedure for promotion to the post of Garden Chaudhary and there must be sanctioned/vacant post of Garden Chaudhary to which the workman can lay claim when he has passed trade test conducted by the department. Workman has not passed the said trade test nor is he performing duties of Garden Chaudhary. Management, on merits, has denied material averments. It is also denied that the workman herein was performing duties of Chaudhary with effect from 01.04.1989. Accordingly, it is prayed that claim of the workman herein is liable to be dismissed, being devoid of merits.

6. Against this factual background, based on pleadings of the parties, this Tribunal vide order dated 05.08.2016 framed the following issues:

(i) Whether reference is not maintainable, in view of the various preliminary objections?

(ii) As in terms of reference

7. Workman, in support of his case, examined himself as WW1 and Shri B.K. Prasad as WW2, tendered in evidence their affidavit Ex.WW1/A & Ex.WW2/A and also tendered in evidence documents Ex.WW1/1 and Ex.WW2/1 to Ex.WW2/3 respectively. Management, in order to rebut the case of the workman, examined Shri Subodh Kumar, Assistant Director (Horticulture) as MW1, whose affidavit is Ex.MW1/A and he also relied on documents Ex.MW1/1 to Ex.MW1/3.

8. I have heard Shri B.K. Prasad, A/R for the workman and Shri Nitin Soam, A/R for the management.

**Findings on Issue No. (i)**

9. It is clear from the preliminary objections taken in the written statement by the management that the management has raised objection that no demand notice has been served upon the management nor the MCD General Mazdoor Union has any locus standi to raise the present dispute as the union is not a recognized union of the management. To my mind, there is no requirement of law that a dispute can be raised only by a recognized union. In this regard, it is appropriate to refer to the judgement of the Hon'ble Apex Court in the case of State of Bihar Vs. Kripa Shankar Jaiswal (AIR 1961 (2) SC Report 1) wherein also objection was taken on behalf of the management that the union was not a registered under the Trade Union Act on the date of the settlement and said plea was rejected by observing as under:

> 'Held, that for a dispute to constitute an industrial dispute it is not a requisite condition that it should be sponsored by a recognized union or that all the workmen of an industrial establishment should be parties to it. A settlement arrived at in course of conciliation proceedings falls within Section 18(3)(a) and (d) of the Industrial Disputes Act and as such binds all the workmen though an unregistered union or only some of workmen may have raised the dispute. The absence of notice under Section 11(2) by the Conciliation Officer does not affect the jurisdiction of the conciliation officer and its only purpose is to apprise the establishment that the person who is coming is the conciliation officer and not a stranger. Any contravention of Section 12(6) in not submitting the report within 14 days may be a breach of duty on the part of the conciliation officer ; it does not affect the legality of the proceedings which terminated as provided in Section 20(2) of the Act.

10. Equally merit-less is the plea taken by the management that the present dispute is not sponsored or espoused by substantial number of workmen. It is fairly settled position in law that even non-espousal of a case by the union

would not deprive the workman of the relief to which the workman is otherwise entitled under the law. Such view appears to have been taken in the case of Nazrul Hassan Siddiqui vs. Presiding Officer, Industrial cum Labour Court Bombay (1997) Lab.I.C. 1807. In the above cited case also contention was raised by the management that the dispute does not fall within the definition of 'industrial dispute' and the same has not been referred or supported by substantial section of workmen. High Court rejected the plea of the management by placing reliance upon the decision of the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd. (AIR 1960 SC 777), which it was observed as under:

> 'We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the appellant's construction of Section 19(6) is based is inapplicable in the matter of the reference under Section 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred or adjudication under Section 20.'

11. In view of the ratio of the judgement discussed above, it is clear that espousal of a dispute by the union is not sine qua non for adjudication of such dispute in terms of Section 10 of the Act. Consequently, this issue is decided in favour of the workman and against the management.

**Findings on Issue No. (ii)**

12. Now, the main issue which requires determination in the case in hand is whether the workman herein is entitled for grant of pay scale of 5200-20200 as revised from time to time alongwith consequential benefits. It is clear from pleadings of the parties that initially the workman herein was appointed as mali on daily wage basis and later on he was regularized on the same post of mali. This fact has not been refuted even by the management.

13. There is also ample evidence on record that the workman herein was performing duty as officiating Chaudhary. It is clear from perusal of office order dated 04.09.2009 Ex.WW1/1 that that name of the workman finds mention at serial No.1. Workman, in order to prove his case, has tendered in evidence his affidavit Ex.WW1/A, wherein material averments contained in statement of claim has been reiterated. It is specifically alleged in the affidavit that he was doing work of acting Chaudhary with effect from 01.01.2006. Workman, in order to prove his case, has tendered in evidence his affidavit Ex.WW1/A, wherein material averments contained in statement of claim has been reiterated. It is specifically alleged in the affidavit that he was doing work of acting Chaudhary with effect from 01.04.1989. There are also averments in his affidavit that one Shri Jai Chand has also been granted pay scale of Chaudhary by the management of MCD and Sultan Singh and others vs. MCD, who were doing work of acting Chaudhary , vide judgement of the Hon'ble High Court, i.e. in the case of MCD vs. Sultan Singh & others and necessary orders for implementation of the said judgement were issued by MCD.

14. There is no merit in the stand taken by the management in its reply, that the workman here is not entitled for promotion to the post of Chaudhary inasmuch as he has not appeared in the trade test conducted by the department. To my mind, this plea is devoid of any merit inasmuch as similarly situated other workers who were performing duties of Chaudhary, i.e. acting Chaudhary have been granted pay scale of Garden Chaudhary after judgement dated 27.07.2011 rendered by the Hon'ble High Court in the case of MCD vs. Sultan Singh as well as MCD vs. Mahipal(WP 5550 of 2010). Operating portion of the judgement in Sultan Singh (supra) of the Hon'ble Division Bench is as under:

> "28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.
>
> 29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un- sustainability or perversity in the orders of the Tribunal has been made out.
>
> 30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost."

15. It is further clear that SLP was also filed by MCD before the Hon'ble Apex Court by special leave application No. S20069/2011 MCD vs. Sultan Singh and others which was also dismissed as withdrawn vide order dated 09.04.2012. It is further clear that the Hon'ble High Court in Sultan Singh case strongly deprecated the stand taken by the management that the workmen were not possessing requisite qualification or have not qualified the test etc. It was clarified that since the workmen were discharging duties to the post of Garden Chaudhary, as such, workmen were entitled for the salary of Garden Chaudhary and competent authority need not look into anything else except the fact that the workman had worked as Garden Chaudhary. Therefore, stand taken by the management that the workman herein could not qualify the test conducted by the department is without any merit and has no relevance so far as question of grant of salary against the post of Garden Chaudhary is concerned.

16. It is not out of place to mention here that even if the workman herein was not a party in Sultan Singh case referred above, judgement of the Hon'ble High Court is binding on the management and management is required to implement the same in letter and spirit and the same is judgement in rem, and all similarly situated workmen are required to be accorded the benefit of the said judgement of the Hon'ble High Court, which have become final. There is no question of even plea of delay and laches when management had not led any evidence to prove the same. The Hon'ble High Court has decided an abstract proposition of law, i.e. a mali who is performing duty as officiating/acting Chaudhary is entitled to the salary/wages of Chaudhary. Law is fairly settled that if a person is working on a higher post, on adhoc or temporary basis, even such workman is entitled to salary/wages of higher post, unless rules or regulations specifically provides otherwise. I find support to this view from Secretary vs. Lieutenant Governor Port Blair (1998 Lab.I.C. 598), yet in another case, Hon'ble Apex Court while considering that question of grant of benefits to similarly situated employees who were not party to the writ petition or lis in the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015) 1 SCC 347 observed as under:

> "The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled from the judgments, cited both by the appellants as well as the respondents, can be summed up as under:
>
> (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.
>
> (2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
>
> (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

17. In view of the ratio of law discussed hereinabove, it is held that the workman herein, Shri Balak Ram is entitled to the pay scale of Garden Chaudhary with effect from 01.01.2006 and as a corollary, management is liable to grant promotion of Garden Chaudhary in the pay scale of Rs.5200-20200 from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 23, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 923.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महानिदेशक, सीपीडब्ल्यूडी, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 110/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 923.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 110/2017) of the Central Government Industrial Tribunal cum Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Director General, CPWD, New Delhi & Others and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI.**

**ID No. 110/2017**

Shri Deepak,
s/o. Shri Jaswant Singh, Beldar,
c/o. All India Cetral PWD (MRM) Karamchari Sangathan (Regd),
H.No.4823, Gali No.13,
Balbir Nagar Extn. Shahdara,
Delhi 110032. …Workman/Claimant

**Versus**

1. The Director General,
CPWD, Nirman Bhawan, New Delhi.

2 The Executive Engineer,
ACD-4, CPWD, Vidyut Bhawan, New Delhi.

3. M/s Anil Mahajan,
C/o. Executive Engieer Chandigarh Central Div.II,
CPWD, Store Building, Sector 7-B,
Chandigarh. ….Managements/Respondents

**AWARD**

This is a claim filed directly on behalf of the claimant/workman, by Shri Satish Kumar Sharma, authorized representative, under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"). Briefly stated facts of the case are that the workman was employed with CPWD as Beldar w.e.f. 14/1/20013 and his services have been terminated w.e.f. 19/10/2016 without service any notice, notice pay and retrenchment compensation etc., despite the fact that the duty which was being performed by the workman is of perennial nature. Prayer has been made for reinstatement of the workman into service with full back wages.

2. The claim petition has been resisted by the Management No.2 and 3 who filed separate written statements. Management No.2 took resisted the claim of the claimant inter alia on the ground that the claimant had never been engaged as employee by Management No.2 inasmuch as the claimant is a labour of contractor to whom contract had been awarded by CPWD authorities after inviting open tenders. Management No.3 while denying the averments made in the claim petition stated that the workman was appointed for a particular period of time i.e. completion of the work project which was completed on 18/10/2016 and in fact, the workman has joined another contractor M/s Modern Electricals, Chandigarh w.e.f. October, 2016. Prayer has been made for dismissal of the claim petition.

3. The claimant/workman filed rejoinder to the written statement of Management No.2 wherein he denied all the allegations made by the Management and reiterated his own case as set up in the claim petition.

4. On the pleadings of the parties, following issues were framed on 15/1/2018 :-

1) Whether the termination of service of the claimant is illegal and against the provisions of ID Act ?
2) Whether the claimant is entitled for reinstatement with full back wages ?
3) Whether the claim is not maintainable in view of the preliminary objections ?

5. This Tribunal made efforts for reconciliation between the parties and such efforts became fruitful, inasmuch as parties arrived at amicable settlement, with the result the workman/claimant has been reinstated into service by the Management. To this effect, A/R appearing for the claimant made separate statement before this Tribunal today and clarified that the workman/claimant does not press his claim petition for any relief because he has been reinstated into service and in fact the claimant has already joined his services. A/R for the Management also made separate statement before this Tribunal, accepting the version of the A/R for the claimant/workman.

6. In view of the fact that the parties have already arrived at amicable settlement and that the claimant/workman has since been reinstated into service by the Management, the claim of the workman/claimant stands satisfied. Award is passed accordingly.

Let a copy of this Award be sent for publication as required under Section 17 of the Act.

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 924.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, जामिया मिलिया इस्लामिया के रजिस्ट्रार, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 118/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-42011/42/2016-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 924.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 118/2016) of the Central Government Industrial Tribunal cum Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Registrar of jamia Miolia Islamia, New Delhi and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-42011/42/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI**

**ID No. 118/2016**

Ms. Naila Khatoon,
d/o.s Shri Syed Moha. Ghaus,
r/o. F-36, IIIrd Floor, Johari Farm Noor Nagar Extn.,
Jamia Nagar, New Delhi
Through Delhi Karamchari Sangh (Regd.),
W-4, Opp. Kalkaji Bus Depot,
Govindpuri, New Delhi 19. …Workman/Claimant

**Versus**

The Registrar of Jamia Milia Islamia,
Jamia Nagar,
New Delhi 110025. ...Management

**AWARD**

In the present case, matter was referred to this Tribunal vide letter No. L-42011/42/2016-IR(DU) dated 06.05.2016 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of Jamia Milia Islamia in terminating the services of Ms. Naila Khatoon and withholding her legal dues is illegal and/or unjustified and if so, what relief is she entitled to and what directions are necessary in this respect ?

2. Both parties were put to notice and the claimant. Ms.Naila Khatoon/workman filed statement of claim. As per the averments made in the claim petition, the workman was appointed by the Management on 29-11-2011 as Caretaker and her last drawn wages was Rs.12324/- per month. The Management had deputed the workman/claimant at Hall of Girls Residence, Jamia Mila Islamia, though no appointment letter was issued to her. During the course of employment, she did not give any chance of complaint to the Management and her service record was well satisfactory. The Management had provided one room set in the Hall of Girls residence to her and had taken work for full 24 hours per day but the Management neither paid any over time wages to her, nor provided any legal facilities like ESI, PF, Bonus, Pay Slip, Leave with wages etc to her despite her demand. The Management started to get rid of workman but failed and thereafter Management stopped her earned wages for the month of May and June, 2015 to her. On 30/7/2015 when she again demanded her wages for the months of May & June, 2015, the Management became annoyed and illegally terminated her services on 1/8/2015 without any rhyme or reason and without paying the wages for the months of May, June and July, 2015 to her. Even no show cause notice or memo was issued against the workman. Demand notice was sent to the Management by the workman/claimant on 6/8/2016 but the management despite service neither reinstated her nor paid earned wages to her nor gave any reply to the demand notice. The workman has worked with the Management continuously since the date of her joining till the date of termination and she neither absented from the services nor resigned herself. The workman searched for the job at many places but she did not find any work and she is still unemployed and she wants to join duty with the Management on the same post. The claimant has prayed for her reinstatement in servie with continuity of service and with full back wages.

3. The claim petition has been resisted by the Management who filed its reply. While denying the allegations of the workman regarding non issuance of appointment letter, it has been stated that Office order was issued by the Officer on Special Duty and workman was asked to sign the contract agreement which was accordingly signed by the workman/claimant. As regards the performance of the workman/claimant, it has been alleged that the Provost of the Management had made a complaint against the workman that she was a part of the group who destroyed and removed official papers from the files of Provost office in the night of 1st and 2nd April, 2014. She has an adult son who lives with her which is not appropriate as girls of the same age group live in the hostel/Hall of Girls Residence. The boy often enters girls rooms and interacts with them which may result in any incidence of grave nature. Male visitors visit and often stay in her room for several hours, though such visitors are not allowed in the Hall of Girls Residence. The workman has been non cooperative and very irrersponsible in the performance of her duties throughout and she removed an air-conditioner from her previous room in G.P. Girls Hostel and sent out of the hostel. Copy of the complaint dated 15/6/2015 so made by the Provost has been annexed. It is also stated that the workman was working on contractual basis, residing in hostel campus and was working as per agreement It is denied that Management took 24 hours service or overtime from her without any payment. It has been averred that the Management has already cleared all dues of the claimant as per law of Central University, Jamia Milia Islamia. Prayer has been made for dismissal of the claim petition.

4. The claimant/workman filed rejoinder wherein she denied all the allegations made by the Management and reiterated her own case as set up in the claim petition.

5. On the pleadings of the parties, this Tribunal vide order dated 10/11/2016 held that no specific issue excepting the one as referred by the Govt. of India in the Reference required adjudication.

6. The Claimant in support of her case examined herself as W.W.1 and tendered her affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/7.

7. On the other hand, the Management in order to rebut the case of the claimant examined two witnesses – one Prof. Mehtab Manzar, former Provost of GP Girls Hostel, Jamia Milia as MW1 who tendered his evidence by way of affidavit Ex.MW1/A alongwith documents Ex.MW1/1 and Ex.MW1/2 and another Syed Enayatullah, Section officer who also tendered his evidence by way of affidavit Ex.MW2/A.

8. I have carefully gone through the evidence adduced on record by both the parties and have give my thoughtful consideration to rival contentions of the parties counsel.

9. It is clear from the pleading of the parties on record that the claimant/workman was appointed by the Management on 29-11-2011 as Caretaker and her last drawn wages was Rs.12324/- per month. The Management had

deputed the workman/claimant at Hall of Girls Residence, Jamia Mila Islamia, As per the case of the workman, she had been continuously performing her duty & give no chance of complaint to the Management and that is why the Management had provided one room set in the Hall of Girls residence to her and had taken work for full 24 hours per day but the Management neither paid any over time wages to her, nor provided any legal facilities like ESI, PF, Bonus, Pay Slip, Leave with wages etc to her. The claimant has made demand to the Management several times but of no use. The Management now wants to get rid of her and as such on 30/7/2015 the Management terminated her services.

10. The factum of engagement of the claimant by the Management stands duly admitted in the written statement/reply. It has been alleged in para 2 and 3 of the reply that an agreement of service was executed between the parties which was duly signed by the claimant/workman. As per the pleading and evidence adduced on record, Prof. Mehtab Manzar Ali (MW1) who was earlier working as Provost with the Management, had made a complaint against the workman as she had destroyed and removed official papers from his office in the night of 1st and 2nd April, 2014 Male visitors used to visit and often stay in her room for several hours. She had removed an air conditioner from her previous room in GP Girls Hostel. She was working on contractual basis and was residing in Hostel campus. Thus, the engagement of the claimant by the Management stands duly admitted even in the reply.

11. It is also appropriate to refer to the statement of the workman/claimant. Her affidavit is Ex.WW1/A, which is on the similar lines of the averments made in the statement of claim. The workman /claimant has admitted in her cross examination that the Management had entered into an agreement with her which is ExWW1/M-1. She has feigned ignorance regarding the complaint Ex.WW1/M-2 made against her. However, she admitted having received office orders dated 29-10-2014 and 30-11-2011 which are Ex.WW1/7 and Ex.WW1/M-3 respectively. It is clear from the office order Ex.WW1/M-3 that Vice Chancellor of Jamia Millia Islamia had approved the engagement of the claimant as Caretaker in GP Girls Hostel, on a consolidated salary of Rs.8502/- per month. Office order dated 29/10/2014 of the Management clearly shows that the claimant was initially engaged as Caretaker in GP Girls Hostel w.e.f. 28/10/2014 for a period of 180 days till further orders. The service agreement which was duly executed between the Management and Workman is Ex.WW1/M-1. It is manifest from clause 6 of the said agreement that initial wages of the workman was Rs.8502/- per month and her services were to be continued subject to her performance. There is also one letter Ex.WW1/M-2 wherein certain allegations have been leveled against the workman to the effect that she had destroyed and removed official papers of the Management. The said letter is dated 16/6/2015.

12. It is clear from the documents filed on record by the side of Management that Management wanted to get rid of the claimant as the Management was of the view that the claimant was performing her duty sincerely and honestly and that she had destroyed some vital papers of the Management.

13. Now the vital question for consideration before this Tribunal is whether termination dated 30/7/2015 of the claimant from her services by the Management is in accordance with law or in violation of the provisions of Section 25-F of the Act.

14. Perusal of the notice Ex.WW1/1/A shows that case of the claimant was also taken up by Delhi Karamchari Sangh (Regd.) in its meeting and notice was served upon the Management to take back the claimant in the job vide notice dated 29/9/2015. Prior to this another notice dated 6/8/015 (Ex.WW1/2) was served upon the Management to settle the matter of the claimant. Ex.WW1/5 is the copy of Identity Card of the claimant/workman , whereas Ex.WW1/6 is the copy of bill/cash memo of Air Conditioner which was installed in the Girls Hostel, where the claimant was performing her duty Ex.WW1/7 is an office order issued by the Management whereby the services of the claimant has been extended from 28/10/2014 for a period of 180 days or till further order, whichever is earlier.

15. As discussed above, it is proved that the claimant/workman was in continuous service of the Management from 29/11/2011 till her termination. Learned AR for the Management urged that Management has paid retrenchment compensation to the claimant in terms of the provisions of Section 25-F of the Act. As such, termination of the claimant can not be held to be illegal or void. Attention of this Tribunal was also invited to the statement of Prof. Mehtab Manzar, former Provost of Jamia Mila whose affidavit is Ex.MW1/A. When he took charge of the post of Provost on 1/4/2014, the claimant was working at that time. He is not aware if the workman filed a complaint on 29/9/2015 in the Labour Office. He admitted that workman was also Caretaker of the girls Hostel. As per version of this witness, the workman was not working satisfactorily and she was orally reminded to improve her functioning. He has made a vital admission that services of the claimant was terminated on 1/8/2015, though he denied the suggestion that the Management has not paid the wages for the month of June and July, 2015 to the workman/ claimant. There is no evidence on record to show that salary for the months of June and July 2015 has been paid to the claimant/workman by the Management. There is also no record that retrenchment benefits have been paid to the claimant at the time of her termination from services.

16. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management Bank to be illegal and void under the law.

17. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such noticed, any compensation was paid to her, as such action of the Management in terminating the services of the workman is held to be illegal and void. There is also nothing on record to prove that wages for the months of June and July were paid to the workman. The Management should have produced documents in this regard, as the workman during that period was admittedly in the employment of the Management.

18. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that claimant was continuously in the employment of the Management since 20/11/2011. There is no show cause notice or memo issued to the claimant/workman by the Management. Moreover, the job of the workman is of perennial and regular nature as Caretaker in the Girls Hostel is always required to perform her duties, description of which are duly mentioned in the Agreement Ex.WW1/M-1.

19. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

> "The propositions which can be culled out from the aforementioned judgments are :
>
> i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
>
> ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

20. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

21. Three Bench Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be totally, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

22. Hon'ble Apex Court in the case General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716 observed as under :-

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get***

***another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."*

23. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service with full back wages including the wages for the months of June and July, 2015, inasmuch as termination of the claimant/workman is per-se illegal, particularly when the job is of permanent nature and the claimant/workman is not gainfully employed anywhere since after her termination. Award is passed accordingly.

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 925.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य प्रशासनिक अधिकारी, वायुसेना स्टेशन राजोकारी, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 92/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2018 को प्राप्त हुआ था।

[सं. एल-14011/03/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 1st June, 2018

**S.O. 925.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 92/2015) of the Central Government Industrial Tribunal cum Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief Administrative Officer, Air Force Station Rajokari, New Delhi and their workmen, which was received by the Central Government on 30.05.2018.

[No. L-14011/03/2015-IR (DU)]
RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI.**

**ID No. 92/2015**

Shri Arvind Kumar s/o Late Babu Lal
C/o. All India General Mazdoor Trade Union (ATUC),
170, Bal Mukund Khand, Giri Nagar,Kalkaji, New Delhi 110019. .....Workman/Claimant

**Versus**

The Chief Admn. Officer
SWO Office, 25 Wing Vayu Sena,
Airforce Station Rajokari,New Delhi 110038 …… Management

**AWARD**

In the present case, a reference was received from Ministry of Labour & Employment vide letter No. L-14011/03/2015-IR(DU) dated 5-3-2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under :-

"Whether the action of the management in terminating the services of Shri Arvind Kumar s/o Shri Babu Lal w.e.f. 16.06.2009 is illegal and/or Unjustified and if so, what directions are necessary in this respect ?"

2. Both the parties were put to notice. Shri Arvind Kumar, claimant has filed statement of claim with the averment that he was engaged by the management in August 1999 on salary of Rs.3683/- per month. He has been performing his duty honestly and sincerely as there was no complaint from any quarter against the claimant.

3. It is case of claimant that he was not given leave nor supplied with attendance card as well as letter of appointment not he was given any overtime payment, bonus etc. by the management. When he demanded these facilities, thereupon management became revengeful. The service of the claimant was illegally terminated on

16.06.2009. He was not also paid salary for 01.05.2009 to 15.06.2009. The action of the management in terminating the service of the claimant has been alleged to be arbitrary and illegal being in violation of provisions of Section 25-F of the Act.

4. The claimant has sent a notice dated 21.02.2014 to the management, but of no use. Thereafter claimant has raised the matter of his illegal termination with his union. The management was also summoned for conciliation by the conciliation officer. Officially prayer has been made by the claimant for his reinstatement with full back wages.

5. The claim was contested by the management but filed written statement which has been denied by the management that claimant was working on the post of mali he was engaged as conservancy casual labour from time to time on daily wage basis as per the requirement at the air force station Rajokri. In para-2 of the reply it is alleged that in view of the policy decision taken by the government the work of conservancy service has been outsourced by the management to private contractor. The claimant was never a permanent workman and his service was hired from time to time on daily wage basis. The management has denied other averment made in the statement of claimant. Rejoinder was also filed on behalf of claimant wherein the claimant has reiterated the stand taken in the statement of claim.

6. Against this factual document this Tribunal on the basis of pleadings of the parties framed following issues on May 25, 2016:-

I) Whether services of the claimant have been terminated wrongly/ illegally and the workman is liable to be reinstated in service as alleged

II) Whether the claim is not legally maintainable in view of the preliminary objections ?

7. The claimant in order to prove the cause against the management examined ww1 and tendered as affidavit WW1/A along with documents. The management has not examined any witness to rebut the case of the claimant.

**Issue No. I & II**

8. Both these issues have been taken up together for the purpose of discussion and they can be conveniently disposed of. It is clear from the pleadings as well as evidence on record the service of the claimant was initially taken by the management as mali in the year 2009. It is also alleged in the affidavit his initial salary of Rs.3683/- and his services was illegally terminated by the management on 16.06.2009.

9. The main contention raised on behalf of workman is to the fact that his service was terminated by the management without serving a requisite notice in terms of Section 25-F of the Act in violation of the provisions of Section 25-F of the Act. The claimant was not paid any retrenchment compensation not one month salary in lieu of one month notice was paid by the management to the claimant. Both these facts were not denied by the Ld. AR for the management.

10. It was strongly urged on behalf of management that claimant was simply casual worker and doing the conservancy work intermittently and he was paid wages as per the Minimum Wage Act by the management. In the contention of the management such a workman does not fall strictly within the definition of workman as defined in Section 2(s) of the Act.

11. In order to appreciate the contention of the management it is necessary to reproduce the definition of workman as given in Section 2(s) of the Act :-

"2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 of 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) Who is employed in the police service or as an officer or other employee of a prison , or

(iii) Who is, employed mainly in a managerial or administrative capacity, or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

12. It is clear from the perusal of the above definition that a person employed in any industrial establishment doing any manual work whether skilled, unskilled etc. Is included in the definition of the workman. It is nowhere provided that such a workman is required to perform work regularly so as to attain the status of a workman.. It should be borne in mind that there is no distinction in industrial law between a permanent employee and a temporary employee. As long as a person is employed to do any manual, unskilled, skilled, technical, operation, clerical or

supervisory work for hire or reward, he is a workman under the Industrial Disputes Act and will get the benefit of that Act. Therefore, Section 25 –F read with Section 25-B shall come in aid of even those workmen who are employed on muster roll or casual basis and their services can only be terminated by giving them notice as provided in the said sections subject of course to the condition that they have rendered more than 240 days of service in a calendar year prior to the proposed termination. *The Hon'ble Apex Court in the case of* ***Devinder Singh v. Municipal Council, Sanaur, Ciil Appeal No. 3190 of 2011, SLP No. 12187*** *opined that the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*

13. It is thus clear from the perusal of the above that even casual or temporary or adhoc workman is included in the definition of the workman. The contention of the management that a casual or a part time workman is not included in the definition of workman is contrary to the law laid down in the above case. Therefore, the contention of the management that claimant is herein does not fall in the definition of the workman as defined in the Section 2(S) of the Act and is held to be meritless as such is rejected..

14. No doubt under the law, initial onus is always upon the workman to prove that he has worked for 240 days in a calendar year preceding his termination. However, the said onus in the present case stood discharged by the factum of the admission made by the management that claimant was engaged as a casual workman for conservancy work. Moreover, the management was directed by this Tribunal vide order dated 10.09.2017 to produce the attendance record for the period during which claimant was engaged by the Management as well as the record of payment of wages. However, the said record was not produced despite time sought by the management for production of such record. Resultantly, this Tribunal is bound to draw adverse inference against the management. More so, when management has not adduced any evidence worth the name to prove its stand.

15. Now, the next vital question before this Tribunal is whether the claimant herein entitled to the protection of Section 25-F of the Act. Admittedly no show cause notice was served nor salary in lieu of one month notice was paid to the claimant before his retrenchment. It is clear from the statement of claimant Shri Arvind Kumar, ww-1 that he has filed documentary proof of his engagement as mali. The claimant has tendered evidence various certificates which are Ex.ww-1/10, 2) Ex.WW-1/15. A bare perusal of the above certificate should show that claimant has been working as casual conservancy labour at the station since August 1999. This fact is also supported by another character certificate Ex. www 1/5 issued by Shri J.K. Chandra. There is another letter Ex. WW 1/4 dated 25.02.2014 which also shows that claimant Shri Arvind Kumar has been working with the management since August 1999. Letter Ex. WW-1/6 also shows that the claim of the claimant was being considered for the post of lascar at the station. The claimant has also filed his ID card/temporary pass Ex. WW 1/8. Ex. WW 1/9 shows the date of birth of the claimant as well as qualification.

16. The claimant has clearly deposed that he has been working regularly with the management since August 1999. The management has not filed any documentary proof so as to show that claimant has not worked regularly since 1999. The management has adduced any evidence worth the name so as to prove its stand taken in the pleading. The law clearly settled that in case party to a case does not step into witness box so as to depose notification of the stand taken in its pleading, in that eventuality, the Court can draw adverse inference against such a party. M.W.-1 Wing Commander Avinash Kapoor was afforded opportunity to adduce evidence but has not stated that management does not want to adduce any evidence. Moreover, stand of the management is not that claimant was never engaged as a casual worker but such a casual worker does not come under the definition of workman. As discussed above every kind of workman doing skilled or unskilled job whether part time or temporary is covered by the definition of workman as contained in Section 2(s) of the Act.

17. Now the residual question for consideration is as to whether the action of the management in terminating the services of the claimant without any notice, inquiry or payment of compensation, is legal and justified.

18. Section 25 F of the Act lays down the conditions precedent to the retrenchment of the workman and require the employer to give one month notice to the workman in writing, or one month wages in lieu of such notice as well as retrenchment compensation to such workman. This provision is mandatory and violation of the same would render action against the management under the law. The Hon'ble Apex Court in Bhuvnesh Kumar Dwivedi Vs. M/s Hindalco Industries Ltd. (2014 Lab IC 2643 Supreme Court) interpreted the provisions of Section 25-F of the Act and observed as under :-

> "13..... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer under the conditions enumerated in clauses (a) & (b) of

Section 25-F of the Act are satisfied. In terms of clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25-F (a) and (b ) of the Act is mandatory and non compliance thereof renders the retrenchment of an employee nullity."

19. Accordingly it s held that claimant herein was in the service of the management as a workman and his termination is completely in violation of the Section 25-F of the Act as management has not served one month notice above the claim before ordering his termination nor one month salary in lieu of such notice.

20. Now the last question which is incidental to the main issue is whether claimant is entitled to be reinstated with full back wages. Admittedly, claimant was not holding the regular post against a regular vacancy. There are number of factors which are to be considered while considering the question of reinstatement with back wages. Since claimant was a casual worker and duration of his engagement is also not very long, as such it would be difficult to give the relief of reinstatement to the claimant. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

" Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

21. In the recent decision reported as **2018 LLR 225 titled as District Development Officer & another Vs. Satish Kantilal Amrelia**, Hon'ble Apex Court while aptly applying the law laid down in earlier case of Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177, had awarded lumpsum compensation of Rs.2.5 lakhs to the workman and in Bharat Sanchar Nigam Limited (supra), it was observed as under :-

"33. It is clear from the reading of the aforesaid judgements that the ordinary principle of grant of reinstatement with full back wages when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimization, unfair labour practice, etc. However, when it comes to the case of a termination of a daily wage worker and where the termination is found illegal because of a procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with full back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (see State of Karnataka Vs. Umadevi (3)17). Thus, when he cannot claim for regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay, in such a situation, giving the relief of reinstatement that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of principle of last come first go, viz. while retrenching such a worker daily wage juniors to

him were retained. There may also be a situation that persons junior to him were regularized under some policy but the workman concerned terminated, in such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement in such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such relief can be denied."

22. Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs. 2 lakh appears to be just and reasonable. Both these issues are decided accordingly.

**Relief :-**

23. As a sequel to my aforesaid discussion,, it is held that the action of the management in terminating the services of claimant Shri Arvind Kumar is illegal and unjustified under the law. The claimant is held entitled for compensation of Rs. 2 lakh payable by the management with 6% interest from the date of the publication of the Award. This award is accordingly passed.

Dated : 14.05.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 1 जून, 2018

**का.आ. 926.**—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा–1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 जून, 2018 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय–5 और 6 (धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध मणिपुर राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:–

| राज्य | जिला | संपूर्ण क्षेत्र |
|---|---|---|
| मणिपुर | इम्फाल पूर्व और इम्फाल पश्चिम | इम्फाल म्यूनिसिपल कॉर्पोरेशन |

[सं.एस–38013/02/2018–एस.एस.I]

संतोष कुमार सिंह, अवर सचिव

New Delhi, the 1st June, 2018

**S.O. 926.—**In exercise of the powers conferred by Sub-Section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st June, 2018 as the date on which the provisions of Chapter IV (except Section 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Section 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the Municipal limits of following areas in the State of Manipur namely:-

| STATE | DISTRICT | ALL THE AREAS FALLING UNDER |
|---|---|---|
| MANIPUR | IMPHAL EAST AND IMPHAL WEST | IMPHAL MUNICIPAL CORPORATION |

[No. S-38013/02/2018-SS.I]

S. K. SINGH, Under Secy.

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